

## **Exhibit A**

**LEASE AGREEMENT**

**Between**

**ROCKWALL CROSSING, LTD.,**

**a Texas limited partnership,**

**Landlord**

**and**

**BED BATH & BEYOND INC.,**

**a New York corporation,**

**Tenant**

**ROCKWALL MARKETPLACE**

**ROCKWALL, TX**

**Dated: <sup>September</sup>~~August~~ 3, 2004**

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**EXHIBITS**

Exhibit A	Legal Description of Shopping Center
Exhibit B	Site Plan
Exhibit C	Form of Rent Commencement and Expiration Date Agreement
Exhibit D	Specifications for Landlord's Work
Exhibit D-1	Exterior Elevations of the Premises, and Sidewalk Plan
Exhibit D-2	Exterior Elevations of the Shopping Center
Exhibit E	Permitted Encumbrances
Exhibit F	Tenant's Signage
Exhibit G	Form of Subordination, Non-Disturbance and Attornment Agreement
Exhibit H	Form of Subtenant Recognition Agreement
Exhibit I	Form of Delivery Date Notice
Exhibit J	Form of Delivery Date Certification
Exhibit K-1	Existing Exclusives
Exhibit K-2	Existing Leases
Exhibit L	[Intentionally Omitted]
Exhibit M	Prohibited Uses

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Lease**") is entered into as of <sup>September</sup>~~August~~ 3, 2004 by and between ROCKWALL CROSSING, LTD., a Texas limited partnership, having an office at 2100 W. 7<sup>th</sup> Street, Fort Worth, Texas 76107-2306 ("**Landlord**"), and BED BATH & BEYOND INC., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 ("**Tenant**").

W I T N E S S E T H:

ARTICLE 1  
BASIC TERMS AND DEFINITIONS

Section 1.1 Basic Terms and Definitions. The following terms shall have the meanings set forth in this Section 1.1 except as otherwise expressly provided herein.

1.1.1 Additional Rent: Any monies which Tenant is required to pay to Landlord under the terms and conditions of this Lease, other than Fixed Rent.

1.1.2 Affiliate: A corporation, partnership, person or other entity which is controlling, controlled by, or under common control with, Landlord or Tenant, as the case may be. As used herein, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise.

1.1.3 Alternate Rent: Payment of Percentage Rent (except that for purposes of this paragraph, the Percentage Multiple shall be deemed to be three percent (3%), the Sales Break Point shall be deemed to be One (\$1.00) Dollar and the Sales Break Limit shall not apply), not to exceed fifty percent (50%) of the amount of Fixed Rent which otherwise would have been payable during such period (the "**Cap**"). Alternate Rent shall be payable, without prior notice or demand except as otherwise set forth herein, within thirty (30) days after the end of the calendar month to which it pertains. Alternate Rent payments shall be accompanied by a statement prepared by an officer of Tenant setting forth the amount of "Gross Sales" (hereinafter defined in Subsection 4.4.2) achieved during, and the amount of Alternate Rent payable for, such month.

1.1.4 Common Areas: All areas in the Shopping Center which are, from time to time, available for the joint use and benefit of Tenant and other tenants and occupants of the Shopping Center, and their respective employees, agents, subtenants, concessionaires, licensees, customers and other invitees, including, but not limited to, any and all parking areas, parking spaces, driveways, truck serviceways, passageways, sidewalks, entrances, exits, lighting facilities, courts, landscaped areas, retention or detention areas, and common utility lines.

1.1.5 Common Areas Charges: As defined in Section 5.1 hereof.

1.1.6 Delivery Date: As defined in Section 2.3 hereof.

1.1.7 Effective Date: The date hereof.

1.1.8 Event of Default: As defined in Section 16.1 hereof.

1.1.9 Excused Periods: Periods during which Tenant's failure to conduct the operations of its business or any other business: (x) resulted from alterations or renovations being performed in and to the Premises provided Tenant proceeded to complete the same with reasonable diligence and in good faith, (y) was caused by damage or destruction, eminent domain proceedings or actions, or *Force Majeure*, provided that to the extent Tenant had an obligation hereunder to take any action as a consequence of any such event that Tenant proceeded to take such action in accordance

herewith, or (z) was caused by any act or omission of Landlord, or its employees, agents, or contractors.

1.1.10 Exhibits. The exhibits listed in the Table of Contents annexed to this Lease have been agreed to by the parties and attached hereto, it being the intention of the parties that they shall become a binding part of this Lease as if fully set forth herein.

1.1.11 Fixed Rent: The following amounts for the periods indicated (subject to adjustment pursuant to Section 3.4 hereof):

(a) For the period commencing on the Rent Commencement Date and ending on the last day of the "Initial Term" (defined in Subsection 1.1.43 below), at the rate of Two Hundred Seven Thousand and 00/100 (\$207,000.00) Dollars per year [based on nine and 00/100 (\$9.00) Dollars per square foot of Floor Area in the Premises];

(b) In the event Tenant exercises the first Renewal Option, for the first five (5) year Renewal Period, at the rate of Two Hundred Eighteen Thousand Five Hundred and 00/100 (\$218,500.00) Dollars per year [based on Nine and 50/100 (\$9.50) Dollars per square foot of Floor Area in the Premises];

(c) In the event Tenant exercises the second Renewal Option, for the second five (5) year Renewal Period, at the rate of Two Hundred Thirty Thousand and 00/100 (\$230,000.00) Dollars per year [based on Ten and 00/100 (\$10.00) Dollars per square foot of Floor Area in the Premises];

(d) In the event Tenant exercises the third Renewal Option, for the third five (5) year Renewal Period, at the rate of Two Hundred Forty-One Thousand Five Hundred and 00/100 (\$241,500.00) Dollars per year [based on Ten and 50/100 (\$10.50) Dollars per square foot of Floor Area in the Premises]; and

(e) In the event Tenant exercises the fourth Renewal Option, for the fourth five (5) year Renewal Period, at the rate of Two Hundred Fifty-Three Thousand and 00/100 (\$253,000) Dollars per year [based on Eleven and 00/100 (\$11.00) Dollars per square foot of Floor Area in the Premises].

It is the intent of Landlord and Tenant that Fixed Rent shall be a so-called "gross rent" inclusive of Taxes and Common Areas Charges (including, without limitation, insurance), except that Tenant shall be responsible for Tenant's Pro Rata Share of the increases in Taxes and Common Areas Charges (including, without limitation, insurance) pursuant to Subsections 4.3.2(a) and 5.1.2(b), respectively.

1.1.12 Floor Area: The actual number of square feet of space contained on all floors within any particular building area(s) in the Shopping Center (including the Premises) and, with respect to exterior areas, including all exterior areas leased to or exclusively used by one or more tenants ("**Exterior Tenant Areas**") other than exterior loading dock areas, trash compactor areas, and trash container areas and other than up to an aggregate of 1,000 square feet of outdoor selling areas. All measurements pursuant to this Subsection shall be from the exterior of outside walls or store front and/or to the centerline of any common walls, but in no event shall Floor Area within either the Premises or the remainder of the Shopping Center include any non-selling or storage space areas within any mezzanine, lower floor, second floor or, except as set forth above, any exterior areas.

1.1.13 Force Majeure: As defined in Section 23.4 hereof.

1.1.14 Ground Lessor: The landlord under any existing or future ground or underlying leases encumbering or affecting all or any part of the Shopping Center.

1.1.15 [Intentionally Omitted]

1.1.16 Hazardous Substances: As defined in Subsection 12.4.1 hereof.

1.1.17 Inducement Tenants: As defined in Subsection 2.3.1 hereof.

1.1.18 Landlord: As defined in the preamble and Section 23.11 hereof.

1.1.19 Landlord's Mailing Address: c/o The Woodmont Company, 2100 W. 7th Street, Fort Worth, Texas 76107-2306, or such other place and/or to the attention of such other person as Landlord may notify Tenant from time to time by notice given in accordance with the provisions of Article 18 hereof.

1.1.20 Landlord's Work: As defined in Section 3.1 hereof.

1.1.21 Lease Interest Rate: The then effective prime rate as published from time to time in the "Money Rates" section of *The Wall Street Journal* (or any successor publication thereto) plus two (2%) percent.

1.1.22 Legal Requirements: All laws, statutes, codes, acts, ordinances, judgments, decrees, authorizations, directions and requirements of, and agreements with, all governmental departments, commissions, boards, courts, authorities, agencies, officials and officers, which now or at any time hereafter may be applicable to the Premises, the Shopping Center, or any part(s) thereof.

1.1.23 Mortgagee: Any state or federally regulated: bank, savings and loan association, insurance company, pension fund, credit union, real estate investment trust, or other institutional lender, which is not an Affiliate of Landlord, and which holds a mortgage on the Shopping Center or is the beneficiary under a deed of trust encumbering the Shopping Center.

1.1.24 [Intentionally Omitted]

1.1.25 Percentage Multiple: Four (4%) percent.

1.1.26 Percentage Rent: As defined in Section 4.4 hereof.

1.1.27 Permitted Use: The sale at retail of a variety of linens and domestics (including, but not limited to, sheets, bedspreads, comforters, duvets, pillows, pillow covers, chair pads, placemats, tablecloths, dish towels, oven mittens and aprons); bathroom items (including, but not limited to, towels, shower curtains, bathroom rugs, toilet seats, health and beauty care items and cosmetics, personal care devices and other bathroom appliances and accessories); housewares (including, but not limited to, kitchen utensils, kitchen appliances and kitchen "gadgets," cleaning appliances and supplies, cookware, bakeware, dishes and china, glassware, garbage pails, ironing boards and other laundry items, mops and brooms, candles and candle holders, ready-to-assemble furniture and artificial flowers); frames and wall art; window treatments; closet, shelving and storage items; home furnishings; area rugs; wall and floor coverings; furniture (including, without limitation, mattresses, box springs, bed frames, and bedroom furniture); decorative accessories; photo albums; photo storage boxes; luggage; books; party supplies; cards and stationery; seasonal items; juvenile merchandise (including, but not limited to, toys, car seats and safety-proofing items); specialty food items; food and non-alcoholic beverage services; any and all other items sold or services provided from time to time in any store owned or operated by Tenant or its Affiliate(s) (the aforementioned items are hereinafter collectively referred to as the "**Permitted Items**"); and for any other lawful retail use not specifically prohibited by the provisions of Section 13.1.1 below. In addition, Tenant shall be permitted to use portions of the Premises for storage and office uses incidental to the Permitted Use.

1.1.28 Premises: Being the area cross hatched on Exhibit B hereto, having dimensions as shown on Exhibit B and containing approximately: (i) twenty-three thousand (23,000) square feet of Floor Area, and (ii) one thousand (1,000) square feet of

mezzanine level space for non-selling office purposes, subject to adjustment in accordance with the provisions of Section 3.4 below. In no event shall such non-selling space (or any space used for fire pump facilities) result in any charge to Tenant by way of Fixed Rent or any Additional Rent, nor shall such space be included in the determination of Tenant's Pro Rata Share.

1.1.29 Renewal Option: As defined in Section 2.2.2 hereof.

1.1.30 Renewal Period(s): Four (4) successive periods of five (5) years each, as provided in Section 2.2.2 hereof.

1.1.31 Rent: Fixed Rent, Percentage Rent (if applicable) and/or Additional Rent.

1.1.32 Rent Commencement Date: As defined in Section 2.2 hereof.

1.1.33 Sales Break Point: As defined in Section 4.4.1 hereof.

1.1.33A Sales Break Limit: As defined in Section 4.4.1 hereof.

1.1.34 Shopping Center: The shopping center currently in development and to be known as Rockwall Marketplace, which, when completed as presently designed, will contain approximately two hundred twenty-four thousand (224,000) square feet of Floor Area, on the property located between Ralph Hall Parkway and the I-30 Eastbound Frontage Road, east of Mims Road, in the City of Rockwall, Rockwall County, Texas 75032, and more particularly described in Exhibit A hereto. Landlord shall not change the name of the Shopping Center without giving at least ninety (90) days prior notice to Tenant, and Landlord shall not include the name of any tenant (other than Tenant) in the name of the Shopping Center. Landlord represents that the Shopping Center will consist of a minimum of one hundred seventy-six thousand seven hundred fifty-two (176,752) square feet of Floor Area.

1.1.35 Substantially Completed or Substantial Completion: The completion of specified work at the Shopping Center (including, without limitation, as applicable, Landlord's Work) to the extent that only "Punch List Items" of such work (defined in Subsection 3.3.3 below) shall not be completed.

1.1.36 Taxes: As defined in Section 4.3.3 hereof.

1.1.37 Tenant: As defined in the preamble hereof.

1.1.38 Tenant's Mailing Address: 650 Liberty Avenue, Union, New Jersey 07083, Attn: Mr. Warren Eisenberg, or such other place and/or to the attention of such other person as Tenant may notify Landlord from time to time by notice given in accordance with the provisions of Article 18 hereof.

1.1.39 Tenant's Permits: As defined in Section 2.3.1(b) hereof.

1.1.40 Tenant's Property: All of Tenant's personal property, including, without limitation, phone and alarm systems, satellite antennae, shelving, computers, furniture, cash registers and customer service counters, specialty lighting, track lighting, millwork, conveyor systems, storage racks and signage and any and all other personal property of Tenant which is capable of being removed from the Premises without material damage thereto, but which shall not include electrical systems, heating, ventilation and air conditioning systems, and other mechanical systems, flooring, carpet, elevators, standard lighting and wiring installed within the walls of the Premises. Tenant shall be responsible for paying all taxes levied on any of Tenant's Property before the same shall become delinquent unless the same is contested by Tenant in good faith.

1.1.41 Tenant's Pro Rata Share: A fraction whose numerator is the Floor Area of the Premises and whose denominator is the Floor Area of the Shopping Center as may be re-determined any time a building (and/or Floor Area) is added to or removed from the Shopping Center, but in no event shall Tenant's Pro Rata Share be greater than thirteen (13%) percent. Floor Area shall be deemed added to or removed from the Shopping Center on the earlier of (i) the date upon which such Floor Area is Substantially Completed, or (ii) at such time as an assessment for Taxes is made or removed, as the case may be, with respect to such Floor Area. Within thirty (30) days following written request from Tenant, Landlord shall certify to Tenant in writing as to the then Floor Area of the Shopping Center.

1.1.42 Tenant's Work: As defined in Section 3.1 hereof.

1.1.43 Term: A period (the "**Initial Term**") of approximately ten (10) years beginning on the Rent Commencement Date and expiring at midnight on the last day of January following the tenth (10th) anniversary of the Rent Commencement Date, unless the Rent Commencement Date is February 1, in which event the Expiration Date shall be the day before the tenth (10th) anniversary of the Rent Commencement Date. As used herein: (i) "**Term**" shall refer to the Initial Term, as the same may be extended by any Renewal Period exercised pursuant to Section 2.2.2 below; and (ii) "**Expiration Date**" shall mean the date on which the Term expires.

## ARTICLE 2

### LEASE OF PREMISES; LEASE TERM; DELIVERY DATE

Section 2.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises together with any and all rights, benefits, privileges and easements, now or hereafter appurtenant to either or both of the Premises and the Shopping Center, arising out of any public or private grant or authority, including, without limitation, the non exclusive right and easement to use the Common Areas in common with other tenants and occupants of the Shopping Center.

#### Section 2.2 Term.

2.2.1 Initial Term. Subject to the provisions of this Article 2, the Term shall begin on the sixtieth (60th) day following the Delivery Date (the "**Rent Commencement Date**"). The Term shall expire on the Expiration Date, unless earlier terminated as herein provided. When the Rent Commencement Date has been determined, as provided in this Section, Landlord and Tenant shall execute, acknowledge and deliver, each to the other, a written statement in the form attached hereto as Exhibit C specifying the Rent Commencement Date.

2.2.2 Renewal Options. Provided an Event of Default (as defined herein) has not occurred and is not continuing, Tenant shall have the right and option (hereinafter a "**Renewal Option**") to extend the Initial Term from the date on which it would otherwise expire for four (4) successive renewal periods of five (5) years each (individually, a "**Renewal Period**", and collectively, the "**Renewal Periods**") upon the same terms and conditions as are herein set forth. Each Renewal Option shall be exercisable by notice given to Landlord at least one hundred eighty (180) days prior to the commencement of the applicable Renewal Period(s). In order to prevent the inadvertent failure of Tenant to exercise any of the Renewal Options within the time specified above, the Term of this Lease shall not expire unless and until Tenant fails to exercise a Renewal Option within fifteen (15) days after receiving notice from Landlord (a "**Reminder Notice**") that the Renewal Option in question has not been exercised (Landlord's notice shall not be given prior to the 180th day prior to the Expiration Date), or Tenant gives notice to Landlord that it will not be exercising any remaining Renewal Options. If Landlord fails to give Tenant such a Reminder Notice prior to the Expiration Date, and Tenant occupies the Premises after the Expiration Date, then Tenant shall remain in possession subject to the provisions of this Lease but without the application of

Article 20 hereof. If Landlord then gives Tenant such a Reminder Notice and Tenant exercises its Renewal Option, then the effective date of such exercise shall be retroactive to such Expiration Date. In the event Tenant shall fail to exercise its Renewal Option within fifteen (15) days after Tenant's receipt of a Reminder Notice given in accordance herewith then Tenant shall be deemed to have waived Tenant's right to exercise the Renewal Option and the Term shall end on the later to occur of the Expiration Date or such fifteenth (15<sup>th</sup>) day.

## Section 2.3 Delivery Date.

2.3.1 Definition. Subject to Landlord's delivery to Tenant of the Delivery Date Notice in accordance with the provisions of Subsection 2.3.2 below and Landlord's timely compliance therewith, Landlord shall be deemed to have delivered possession of the Premises to Tenant at 8:00 a.m. on the date (the "***Delivery Date***") following the day on which all of the following conditions (the "***Delivery Date Conditions***") shall have occurred and Tenant shall have received from Landlord the Delivery Date Certification in accordance with the provisions of Section 2.3.3 below, which shall constitute Landlord's written certification that all of the following shall have occurred:

(a) Actual possession of the Premises shall have been delivered to Tenant water-tight, free of Hazardous Substances, in a good, structurally sound condition, with all of Landlord's Work Substantially Completed, which Substantial Completion shall be evidenced by a written certification by Landlord's architect to Tenant;

(b) Landlord shall have obtained (and delivered copies thereof to Tenant, upon request) all permits and approvals required from all applicable governmental authorities to enable Tenant to occupy and use the Premises for the conduct of its business in the Premises (exclusive of any business licenses or permits which Tenant may be required to obtain in order to install Tenant's fixtures, perform Tenant's Work and open and operate its specific business and not a general retail business (collectively, "***Tenant's Permits***")), which permits and approvals shall include, without limitation, zoning and building code approvals, environmental requirements, and a permanent certificate of occupancy for the Premises (unless a permanent certificate of occupancy for the Premises cannot be obtained solely as a result of the failure to complete Tenant's Work in the manner required hereunder, in which event: (1) the delivery of a permanent certificate of occupancy for the Premises shall not be a condition to the occurrence of the Delivery Date, (2) the obtaining of a temporary certificate of occupancy shall be a condition to the occurrence of the Delivery Date, and (3) Landlord shall obtain the permanent certificate of occupancy promptly following the correction or completion of Tenant's Work);

(c) The Common Areas, and all of the improvements thereto within the area shown on Exhibit B hereto as "Bed Bath & Beyond Critical Area" (the "***Critical Area***") shall have been Substantially Completed and operational, and all off-site improvements (including, without limitation, street, storm drainage, and traffic signalization improvements) required for the Shopping Center to open for business and for Tenant to receive a permanent certificate of occupancy shall have been Substantially Completed; Landlord, at its sole cost and expense, shall have obtained (and delivered copies thereof to Tenant, upon request) all permits and approvals required from applicable governmental authorities to enable the Common Areas to be developed, operated, and used for the purposes herein contemplated, which permits and approvals shall include, without limitation, zoning, building code, environmental requirements, curb cut and site plan approvals, all permits pertaining to pylon and/or monument signage (and Tenant's panel(s) thereon), construction, and development and use permits;

(d) The representations and warranties of Landlord set forth in subparagraphs (a) through (i) of Section 12.3 below shall then be true and in effect;

(e) Leases or other occupancy agreements shall have been entered into with the following tenants or occupants (hereinafter collectively referred to as the "**Inducement Tenants**") on the following terms, for occupancy of the premises designated for them on Exhibit B; such leases shall not be cancelable by any of the Inducement Tenants, except for failure of Landlord to complete the Shopping Center, for injury to or loss of the premises thereby demised because of fire or other casualty, or for a taking or for other reasons similar to those for which this Lease is cancelable by Tenant:

<i>Inducement Tenants</i>	<i>Minimum Square-foot Gross Floor Area</i>	<i>Minimum Term</i>
TJ Maxx	As shown on Exhibit B	10 Years
Circuit City	As shown on Exhibit B	10 Years
Recognized Tenants (as defined in Article 22 below)	37,000 total square feet (exclusive of the Premises and the TJ Maxx and Circuit City premises referred to above)	10 Years
Recognized Tenants	13,000 total square feet (exclusive of the Premises and the TJ Maxx premises, Circuit City premises and 37,000 square feet referred to above)	5 Years

(f) Landlord shall have delivered to Tenant, in recordable form: (i) a subordination, non-disturbance and attornment agreement substantially in the form attached hereto as Exhibit G, or such other form as is reasonably acceptable to Tenant as provided in Section 17.3 herein, executed by each holder of any mortgage or deed of trust encumbering or affecting the Shopping Center or any portion thereof (it being understood and agreed that this Subsection 2.3.1 (f) is not intended to extend the date by which Landlord is to deliver to Tenant any document(s) required pursuant to Section 17.3 hereof), and (ii) a fee owner recognition agreement in the form and content described in clause (b) of Section 17.1 hereof executed by any existing Ground Lessor.

#### 2.3.2 Delivery Date.

(a) Landlord shall give Tenant at least one hundred twenty (120) days prior notice of the Delivery Date, using the form of Delivery Date Notice attached hereto as Exhibit I. Landlord's delivery of the Delivery Date Notice shall be a condition precedent to the Delivery Date. Notwithstanding any provision of this Lease to the contrary, in no event shall the Delivery Date be deemed to occur prior to the Delivery Date established in the Delivery Date Notice.

(b) Landlord acknowledges that if it shall fail to satisfy all of the Delivery Date Conditions by the Delivery Date as established in the Delivery Date Notice, Tenant will sustain substantial, additional costs and expenses, including, without limitation, storage costs for fixtures, equipment, and inventory, employee costs during the waiting period, and additional advertising and promotional costs, the exact amount of which would be impracticable or extremely difficult to ascertain. Subject to *Force Majeure* and to the extent of any delays caused by Tenant, its agents, employees and/or



contractors ("**Tenant Delay**"), either of which have occurred after the Delivery Date Notice has been delivered to Tenant, if the Delivery Date does not occur by the date established therefor in the Delivery Date Notice, then, in addition to any other remedies available to Tenant under this Lease, Landlord agrees to allow to Tenant a credit against the initial installment(s) of Rent hereunder equal to, as liquidated reimbursement to Tenant (and not as a penalty) for all of the aforesaid costs incurred by Tenant, the sum of: (i) One Hundred Fifty Thousand Dollars (\$150,000), plus (ii) Five Thousand Dollars (\$5,000) for each day that the Delivery Date established in the Delivery Date Notice is delayed. The foregoing liquidated reimbursements represent the parties' good faith agreement as to an agreed upon amount which shall have been incurred by Tenant and which shall otherwise not be susceptible of exact ascertainment. Notwithstanding anything to the contrary contained in this subsection 2.3.2(b), if the Delivery Date does not occur by the date established therefor in the Delivery Date Notice due solely to Landlord's having failed to satisfy the Initial Co-Tenancy Condition, then, so long as Tenant accepts delivery of physical possession of the Premises, Landlord shall not be obligated to credit Tenant for such liquidated reimbursement.

2.3.3 Delivery Date Certification. Upon the satisfaction of all of the Delivery Date Conditions, Landlord shall so certify to Tenant, using the form of Delivery Date Certification attached hereto as Exhibit J.

2.3.4 No Waiver. Neither Tenant's acceptance of physical possession of the Premises nor Tenant's opening of the Premises for business to the public prior to the Delivery Date shall: (i) be deemed a waiver by Tenant of any of the Delivery Date Conditions, or (ii) relieve Landlord of any obligation under this Lease, unless such condition or obligation is expressly waived in writing by Tenant.

Section 2.4 Unseasonable Delivery: Slack Period. If, for any reason (including, without limitation, Force Majeure, but subject to any Tenant Delay), the Delivery Date occurs during the period commencing on October 1 and ending on the March 31 next following (the "**Slack Period**"), then Tenant shall have, in addition to any other remedies, the right to:

(a) accept delivery of physical possession of the Premises; or

(b) defer its acceptance of delivery of physical possession of the Premises to a later date within the Slack Period, whereupon the Delivery Date shall be deemed to have occurred on the date that Tenant actually accepts physical possession of the Premises (subject to the other provisions of this Article 2 and the continuing satisfaction of the Delivery Date Conditions), except that Tenant shall not be entitled to the per diem liquidated reimbursement provided in clause (ii) of Section 2.3.2(b) for any portion of the Slack Period occurring after the date on which all of the Delivery Date Conditions shall have been satisfied; and

in either event, if the Rent Commencement Date occurs before the April 1 next following the Slack Period, Tenant shall be entitled to pay Alternate Rent in lieu of Fixed Rent and Percentage Rent for the period commencing on the Rent Commencement Date and ending on the March 31 next following; any benefit which Tenant may realize thereby shall constitute a reimbursement to Tenant for certain pre-opening expenses incurred by Tenant in connection with this Lease.

Section 2.5 Initial Co-Tenancy Condition.

2.5.1 As used herein, the "**Initial Co-Tenancy Condition**" shall mean that each and every Inducement Tenant shall have accepted possession of its entire premises, such premises shall have been substantially completed, and each Inducement Tenant shall, if not already open for business, then be actively and continuously engaged in the fixturing and merchandising therein.

2.5.2 If, on the Delivery Date, the Initial Co-Tenancy Condition has not been satisfied, Tenant shall have the right, at its sole option, to:

(a) accept delivery of physical possession of the Premises; or

(b) defer its acceptance of delivery of physical possession of the Premises to a later date (but not later than the date on which the Initial Co-Tenancy Condition is satisfied and Tenant receives notice from Landlord thereof), whereupon the Delivery Date shall be deemed to have occurred on the date that Tenant actually accepts physical possession of the Premises (subject to the other provisions of this Article 2 and the continuing satisfaction of the Delivery Date Conditions), provided in no event shall Tenant be entitled to the liquidated damages set forth in Section 2.3.2(b) in the event the Delivery Date is solely delayed pursuant to this Section 2.5.2(b);

and in either event, if the Rent Commencement Date occurs before the satisfaction of the Initial Co-Tenancy Condition, Tenant shall be entitled to pay Alternate Rent in lieu of Fixed Rent and Percentage Rent until the Initial Co-Tenancy Condition is satisfied and the Landlord gives Tenant notice thereof, subject to any other applicable provisions of this Article 2.

2.5.3 In addition to the provisions of Section 2.5.2 above, if the Initial Co-Tenancy Condition has not been satisfied by the first (1st) anniversary of the Delivery Date established pursuant to Section 2.3.2(a) above, then Landlord and Tenant shall each have the right, at any time prior to the satisfaction of the Initial Co-Tenancy Condition, upon giving to the other party at least sixty (60) days' prior notice, to terminate this Lease as of the date specified in said notice. Landlord may negate any such termination notice by Tenant by causing the Initial Co-Tenancy Condition to be satisfied within thirty (30) days after the date on which said termination notice is given, provided that notice of such satisfaction is given by Landlord to Tenant on or before such thirtieth (30<sup>th</sup>) day. Tenant may negate any such termination notice by Landlord by Tenant's giving Landlord notice, within thirty (30) days after the date on which Landlord's termination notice is given, that Tenant, upon the expiration of the thirty (30) day period will commence paying full Fixed Rent regardless of the continuation thereafter of the failure to satisfy the Initial Co-Tenancy Condition; provided, however, that Tenant shall nevertheless retain its rights under Article 22 below, in the event that once the Initial Co-Tenancy Condition is satisfied, subsequent events cause an Excess Vacancy to exist. If this Lease is terminated hereunder, neither party shall have any further liability under this Lease, except: (i) for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease, and (ii) Landlord shall promptly reimburse Tenant for all of its reasonable third-party costs and expenses incurred in connection with this Lease, including, without limitation, costs associated with the preparation and review of plans and specifications, and the performance of Tenant's Work, not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate.

### ARTICLE 3 IMPROVEMENTS

Section 3.1 Landlord's Work and Tenant's Work. Landlord shall, at its sole cost and expense, perform the work and obligations described on Exhibit D, Exhibit D-1, and Exhibit F hereto, and the "Final Plans and Specifications" (hereinafter defined in Section 3.2) (collectively, "**Landlord's Work**"), and shall deliver possession of the Premises to Tenant in the condition described therein. Except for Landlord's Work, Tenant shall, at its own cost and expense, do any and all work (hereinafter referred to as "**Tenant's Work**") which Tenant desires to adapt the Premises to Tenant's use, subject to Article 8 herein.

Section 3.2 Plan Approvals.

3.2.1 Preparation of Plans and Specifications.

1 (a) Within thirty (30) days after the Effective Date, Landlord  
2 shall deliver to Tenant drawings showing the proposed footprint, column layout, and  
3 interior clear dimensions of the Premises (the "**Preliminary LOD**") [Limits of Demised],  
4 which shall be subject to any reasonable modifications indicated by Tenant as provided  
5 below. The Preliminary LOD shall be substantially consistent with Exhibits B, D, and D-  
6 1 hereto. Tenant hereby acknowledges receipt of the Preliminary LOD.

7 (b) Within thirty (30) days after Tenant's receipt of the Preliminary  
8 LOD, Tenant shall deliver to Landlord its revisions thereto (the "**Revised LOD**"), showing the  
9 location of the interior structural grid (column layout), storefront opening, and mezzanine and/or  
10 office core, the location and arrangement of the loading facilities, trash compactor pad, and trash  
11 container pad(s), and any reasonable revisions to the interior clear dimensions. Landlord  
12 hereby acknowledges receipt of the Revised LOD.

13 (c) Within fifteen (15) days after Landlord's receipt of the  
14 Revised LOD, Landlord shall deliver to Tenant a final LOD (the "**Certified LOD**"),  
15 certified by Landlord, which shall incorporate all of the elements of the Revised LOD.  
16 Within fifteen (15) days after its receipt of the Certified LOD, Tenant shall notify  
17 Landlord of Tenant's approval thereof or the reasons why such approval cannot be  
18 granted, and Landlord shall, within fifteen (15) days after receiving such notice, make  
19 any revisions necessary to correct such matters and obtain Tenant's approval. In the  
20 event Tenant shall fail to respond to the Certified LOD within the 15-day period  
21 following Tenant's receipt thereof, and thereafter Tenant continues to fail to respond  
22 within fifteen (15) days following Tenant's receipt of notice from Landlord of such  
23 failure, which notice expressly states (in capitalized letters): "TENANT HAS FAILED  
24 TO RESPOND TO LANDLORD'S DELIVERY OF THE CERTIFIED LOD AND IF  
25 TENANT CONTINUES TO FAIL TO RESPOND THERETO BY THE DATE WHICH  
26 IS FIFTEEN (15) DAYS FOLLOWING TENANT'S RECEIPT OF THIS NOTICE,  
27 TENANT WILL BE DEEMED TO HAVE APPROVED SAME PURSUANT TO  
28 SUBSECTION 3.2.1(C) OF THE LEASE", then Tenant shall be deemed to have  
29 approved the Certified LOD submitted by Landlord. Upon Tenant's approval of the  
30 Certified LOD, any further changes thereto shall be subject to Tenant's prior written  
31 approval (which may be withheld in its sole discretion), provided that, as to changes  
32 required to conform to Legal Requirements, Tenant shall have reasonable approval rights  
33 within the confines of said Legal Requirements. After Tenant approves the Certified  
34 LOD, Landlord shall be responsible for any and all reasonable costs incurred and delays  
35 experienced by Tenant in connection with any further changes to the Certified LOD  
36 required by Landlord. In the event of a disagreement between Landlord and Tenant  
37 relating to the Certified LOD, Landlord and Tenant agree to negotiate in good faith to  
38 resolve any such dispute. Landlord and Tenant hereby acknowledge that the Certified  
39 LOD has been received and approved by Tenant.

40 (d) Within thirty (30) days after the Effective Date, Tenant shall  
41 deliver to Landlord its Fixture Plan (F1); Floor Finish Plans Notes and Details (F2);  
42 Power/Specialty Lighting Plan and Notes (F3); and Lighting Plans and Notes (F4)  
43 (collectively, "**Tenant's Plans**"), all of which shall be substantially consistent with the  
44 Certified LOD (as same may be reasonably modified by Tenant, as noted above).

45 (e) Within thirty (30) days after receipt of Tenant's Plans,  
46 Landlord shall prepare and submit to Tenant, in a single submission, Landlord's  
47 preliminary plans and specifications (the "**Preliminary Plans**") for Landlord's Work  
48 (which shall include, without limitation, mechanical, electrical, plumbing, fire protection  
49 and high-pile storage, structural, architectural and site plans [including, without  
50 limitation, a site lighting plan with photometrics]), and each of the plans which  
51 collectively constitute the Preliminary Plans shall be at least 85% complete, in Tenant's  
52 reasonable judgment. The Preliminary Plans shall be substantially consistent with  
53 Tenant's Plans, the Certified LOD, and Exhibits B, D, D-1, D-2, and F hereto.

(f) Within thirty (30) days after its receipt of the Preliminary Plans, Tenant shall give Landlord notice of the respects, if any, in which said Preliminary Plans fail to meet Tenant's reasonable approval and/or fail to conform to the Certified LOD, Tenant's Plans, and/or Exhibits B, D, D-1, D-2, and F hereto, and Landlord shall promptly make any revisions necessary to correct such matters and obtain Tenant's approval. In the event Tenant shall fail to respond to the Preliminary Plans within the 30-day period following Tenant's receipt thereof, and thereafter Tenant continues to fail to respond within fifteen (15) days following Tenant's receipt of notice from Landlord of such failure, which notice expressly states (in capitalized letters): "TENANT HAS FAILED TO RESPOND TO LANDLORD'S DELIVERY OF THE PRELIMINARY PLANS AND IF TENANT CONTINUES TO FAIL TO RESPOND THERETO BY THE DATE WHICH IS FIFTEEN (15) DAYS FOLLOWING TENANT'S RECEIPT OF THIS NOTICE, TENANT WILL BE DEEMED TO HAVE APPROVED SAME PURSUANT TO SUBSECTION 3.2.1(F) OF THE LEASE", then Tenant shall be deemed to have approved the Preliminary Plans submitted by Landlord. In the event of a disagreement between Landlord and Tenant relating to the Preliminary Plans, Landlord and Tenant agree to negotiate in good faith to resolve any such dispute.

(g) Within thirty (30) days after the date on which Landlord receives notice of Tenant's approval of the Preliminary Plans, Landlord shall prepare and deliver to Tenant, in a single submission, final plans and specifications (the "***Final Plans and Specifications***"), which shall be substantially consistent with the Preliminary Plans, as approved by Tenant.

(h) Within fifteen (15) days after its receipt of the Final Plans and Specifications, Tenant shall notify Landlord of Tenant's approval thereof or the reasons why such approval cannot be granted, and Landlord shall, within fifteen (15) days after receiving such notice, make any revisions necessary to correct such matters and obtain Tenant's approval. Upon Tenant's approval of the Final Plans and Specifications, any further changes thereto shall be subject to Tenant's prior written approval. In the event Tenant shall fail to respond to the Final Plans and Specifications within the 15-day period following Tenant's receipt thereof, and thereafter, Tenant continues to fail to respond within fifteen (15) days following Tenant's receipt of notice from Landlord of such failure, which notice expressly states (in capitalized letters): "TENANT HAS FAILED TO RESPOND TO LANDLORD'S DELIVERY OF THE FINAL PLANS AND SPECIFICATIONS AND IF TENANT CONTINUES TO FAIL TO RESPOND THERETO BY THE DATE WHICH IS FIFTEEN (15) DAYS FOLLOWING TENANT'S RECEIPT OF THIS NOTICE, TENANT WILL BE DEEMED TO HAVE APPROVED SAME PURSUANT TO SUBSECTION 3.2.1(H) OF THE LEASE", then Tenant shall be deemed to have approved the Final Plans and Specifications submitted by Landlord. Unless specifically noted on a separate summary sheet attached to the Final Plans and Specifications, to the extent of a conflict between the terms and provisions of Tenant's Plans, Exhibit B, Exhibit D, Exhibit D-1, Exhibit D-2, and/or Exhibit F hereto, and the terms and provisions of the Final Plans and Specifications, then the terms and provisions of Tenant's Plans, Exhibit B, Exhibit D, Exhibit D-1, Exhibit D-2, and Exhibit F shall govern and prevail.

(i) All submissions by the parties of the Preliminary LOD, the Revised LOD, the Certified LOD, the Tenant's Plans, the Preliminary Plans, and the Final Plans and Specifications shall be made (or accompanied) by the computer files thereof formatted in any version of "*Autocad*", up to "*Autocad 2002*".

### 3.2.2 Plan Changes.

(a) Tenant shall have the right to make changes from the standards and specifications set forth in "Tenant's Prototype Drawings and Specifications" and/or the "Project Manual", referred to in Exhibit D hereto, and/or to require Landlord to subsequently make changes to either or both of the Preliminary Plans

1 and Specifications and/or the Final Plans and Specifications in accordance therewith (the  
2 **"Changes"**). Any Changes must be evidenced in writing by an authorized representative  
3 of Tenant as a condition precedent to Landlord's obligation to make such Changes.  
4 Within ten (10) business days after receiving Tenant's request for any Change, Landlord  
5 shall give Tenant notice of the cost or savings, and any delay, that may be occasioned by  
6 such Change. If Tenant fails to authorize such Change within five (5) business days after  
7 receiving Landlord's notice, Tenant shall be deemed to have disapproved such Change.

8 (b) Tenant shall pay to Landlord the net reasonable additional  
9 third-party costs of Landlord's Work resulting directly and solely from the aggregate  
10 Changes (exclusive of any charges for overhead and profit, other than sums not  
11 exceeding 5% subcontractor profit and 5% general contractor profit thereon), taking into  
12 consideration any and all actual costs and savings resulting from all Changes, in the  
13 aggregate (including, without limitation, reasonable costs approved by Tenant in advance  
14 associated with any acceleration of the work schedule which Tenant, at its sole option,  
15 may require). Such payment shall be due and payable within thirty (30) days after  
16 Tenant's receipt of backup information reasonably supporting all such costs, including,  
17 without limitation, invoices, receipts and lien waivers of subcontractors and materialmen.

18 (c) Landlord shall pay to Tenant one-half (1/2) of the net  
19 reasonable cost savings resulting from the aggregate Changes, taking into consideration  
20 all reasonable additional third-party costs of Landlord's Work directly and solely  
21 resulting from the Changes (exclusive of any charges for overhead and profit, other than  
22 sums not exceeding 5% subcontractor profit and 5% general contractor profit thereon).  
23 At Tenant's request, Landlord shall deliver to Tenant backup information reasonably  
24 supporting all such additional costs, including, without limitation, invoices, receipts, and  
25 lien waivers of subcontractors and materialmen. Such payment shall be due and payable  
26 within thirty (30) days after the Delivery Date.

27 (d) If the Changes occur during the preparation of any of the  
28 plans described in Section 3.2.1 above, then the deadlines for preparation and delivery of  
29 the plans then being prepared shall be extended as reasonably necessary to incorporate  
30 such Changes. If, despite Landlord's diligent efforts in performing Landlord's Work, the  
31 Changes cause a net delay in the Substantial Completion of Landlord's Work (taking into  
32 consideration any time reductions resulting from such changes), then: (i) the Rent  
33 Commencement Date shall be determined as if such delay had not occurred, (ii) the  
34 commencement of the Slack Period, and the dates set forth in clauses (a) and (b) of  
35 Section 3.3.2 below, shall be extended by the number of days of such net delay; and (iii)  
36 with respect to Changes requested after the Delivery Date Notice is given, for purposes of  
37 calculating liquidated damages under Subsection 2.3.2(b) above, the Delivery Date shall  
38 be extended by the number of days of such net delay.

### 39 Section 3.3 Performance of Work.

40 3.3.1 Both Landlord's Work and Tenant's Work shall be performed in  
41 a good and workmanlike manner, in compliance with all applicable Legal Requirements,  
42 utilizing only new, first-class materials, and in accordance with all insurance company  
43 requirements. Landlord shall perform Landlord's Work in a manner such that Tenant  
44 will be able to obtain Tenant's Permits. Landlord shall pay all impact fees and related  
45 governmental charges in connection with Landlord's Work and all other work performed  
46 by or on behalf of Landlord in connection with the Shopping Center. If Tenant's Permits  
47 cannot be obtained because Landlord's Work has not been completed or has been  
48 performed improperly or by reason of any then existing condition of the Shopping  
49 Center, Landlord shall remedy the situation so as to enable Tenant to obtain Tenant's  
50 Permits, and the Delivery Date shall be deemed delayed, for Tenant's benefit only, on a  
51 day-for-day basis for each day of delay occasioned thereby.

3.3.2 If: (a) Landlord's Work has not been commenced (*i.e.*, if Landlord has not yet poured foundation footings for the Premises) by January 15, 2005, or (b) the Delivery Date shall not have occurred by September 1, 2005 (subject to *Force Majeure*, not to exceed thirty (30) days in the aggregate, and provided that Landlord shall have given Tenant notice of such event of *Force Majeure* promptly after its occurrence), Tenant may thereafter, during such time as Landlord's Work has not been commenced or the Delivery Date has not occurred, as the case may be, consider Landlord to be in default hereunder and, at Tenant's option in its sole discretion, elect to:

(i) terminate this Lease, if Landlord shall fail to fully cure such default within thirty (30) days after receiving Tenant's notice thereof, in which event neither party shall have any further liability hereunder, except: (i) for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease, and (ii) Landlord shall be obligated to promptly reimburse Tenant, as Tenant's sole monetary remedy by reason thereof, for all its reasonable third-party costs and expenses incurred in connection with this Lease (including, without limitation, costs associated with the preparation and review of plans and specifications, attorney's fees and the performance of Tenant's Work), not to exceed Fifty Thousand Dollars (\$50,000), in the aggregate, and/or

(ii) avail itself of the remedies set forth in Section 16.2 below (provided, however, that the cure period set forth therein shall not be applicable); and/or

(iii) extend one or more times the dates set forth in clauses (a) and/or (b) of this Subsection 3.3.2 to such future dates designated by Tenant in notice given to Landlord.

The election by Tenant of any one or more of the foregoing remedies shall not preclude the subsequent election of any alternative remedy provided in this Section, this Lease, at law, or in equity.

3.3.3 Landlord's Work Performed After Delivery of Possession. On or before the Delivery Date, Landlord's and Tenant's representatives together shall conduct a walk-through of the Premises to compile a punch list of the "Punch List Items" (hereinafter defined). Tenant shall deliver to Landlord a copy of said punch list within five (5) days after the walk-through. Landlord shall complete any Punch List Items within ten (10) days after it receives a copy of said punch list, or such extended period of time (not to exceed an additional fifteen (15) days) as may reasonably be necessary provided Landlord is diligently pursuing completion of such Punch List Items. If Landlord fails to complete any item on said punch list within said 10-day period (subject to the extension set forth above), Tenant shall have the right to complete such item(s) using its own contractors and receive reimbursement from Landlord for the reasonable costs and expenses thereof upon demand. If reasonably required by Tenant, any portion of Landlord's Work which is performed after Tenant accepts physical possession of the Premises shall occur only "after hours", when neither Tenant nor any of its agents, contractors, employees and servants are working within the Premises, and Landlord shall reimburse Tenant for the reasonable costs and expenses incurred by Tenant by reason of such "after hours" performance of Landlord's Work. As used herein, the term "**Punch List Items**" shall mean such minor items of a cosmetic nature which, when considered as a whole, do not adversely affect either the performance of Tenant's Work or Tenant's ability to conduct its normal business operations in the Premises, including, but not limited to, landscaping within the Common Areas.

3.3.4 Tenant's Right of Entry. Prior to the Delivery Date, Tenant may enter upon the Premises for the purposes of inspecting the work, taking measurements, making plans, erecting temporary or permanent signs and doing such other work as may



1 be appropriate or desirable without being deemed thereby to have taken possession or  
2 obligated itself to pay Rent, provided, however, that Tenant shall not, during the course  
3 of such work, materially interfere with the performance of Landlord's Work and shall  
4 indemnify and hold Landlord harmless from and against any and all claims or losses  
5 arising from Tenant's entry upon the Premises, except to the extent caused by Landlord,  
6 its agents, employees, or contractors.

7 3.3.5 [Intentionally Omitted]

8 3.3.6 Work Requirements After Delivery Date. Following the  
9 Delivery Date, any construction by Landlord or other tenants or occupants of the  
10 Shopping Center materially affecting any portion of the Shopping Center shall be subject  
11 to the following terms and conditions:

12 (a) staging and storage of materials and parking of construction  
13 vehicles shall occur only within the portions of the Shopping Center designated outside  
14 the Critical Area;

15 (b) Landlord shall diligently ensure that, from and after Tenant's  
16 opening for business to the public, no ingress, egress or passage of any construction,  
17 delivery and related vehicles engaged in the performance of such work or other  
18 construction activities shall take place except through the entrance/exit drive designated  
19 as the "Post Delivery Construction Drive" on Exhibit B hereto; and

20 (c) Landlord shall maintain, or cause to be maintained, the  
21 Shopping Center in a clean, safe, and sightly condition, and shall use reasonable efforts to  
22 ensure that such construction shall not materially adversely interfere with the normal  
23 conduct of any business operations in the Premises.

24 3.3.7 Tenant's Trailer. Landlord shall install a trailer for Tenant's  
25 exclusive use in conducting employee interviews and recruiting, in accordance with  
26 Exhibit D hereto, in the location shown on Exhibit B hereto. Said trailer shall be installed  
27 and operational at least forty-five (45) days prior to the Delivery Date, and shall be  
28 removed within twenty (20) days (but not sooner than ten days) after the Delivery Date.

29 Section 3.4 Measurement; Adjustment of Rent.

30 3.4.1 Measurement of Premises and Shopping Center. Within five (5)  
31 days after the completion of the first course of masonry for the exterior walls of the  
32 Premises and demising walls of the Premises (and at least sixty (60) days prior to the  
33 Delivery Date), Landlord shall deliver to Tenant a certification to Tenant by Landlord's  
34 licensed architect, surveyor or engineer of the interior clear dimensions and the Floor  
35 Area of the Premises, and Floor Area of the Shopping Center (to the extent of completion  
36 of the first course of masonry for the exterior level walls of the Shopping Center, with  
37 supplemental certifications for additional completed exterior walls of the Shopping  
38 Center to be thereafter provided from Landlord from time to time), the measurements of  
39 which shall be subject to confirmation by Tenant's licensed architect, surveyor or  
40 engineer within six (6) months after Substantial Completion of any areas so certified,  
41 failure of which shall be deemed a waiver by Tenant to challenge such certification. If  
42 Landlord shall fail so to deliver such certification to Tenant, Tenant shall have the right to  
43 have any of such measurements made and certified to Landlord by Tenant's licensed  
44 architect, surveyor or engineer. If the interior clear dimensions and/or the Floor Area of  
45 the Premises vary from those shown on the Certified LOD (as may be modified by any  
46 applicable Changes), then Landlord shall correct such work to conform to the Certified  
47 LOD (as may be modified by any applicable Changes).

48 3.4.2 Measurement of Storage Area/Mezzanine. Within five (5) days  
49 after the completion of the floor system for the non-selling office mezzanine and the  
50 installation of the floor tracks for the walls enclosing it, Landlord shall deliver to Tenant

a certification to Tenant by Landlord's licensed architect, surveyor or engineer of the Floor Area of said non-selling office mezzanine space, the measurements of which shall be subject to confirmation by Tenant's licensed architect, surveyor or engineer within six (6) months after Substantial Completion of any areas so certified, failure of which shall be deemed a waiver by Tenant to challenge such certification. If the square footage of the non-selling office mezzanine varies by more than 1% from that shown on the Final Plans and Specifications (as may be modified by any applicable Changes), then, at Tenant's request, Landlord shall correct such work to conform to the Final Plans and Specifications.

3.4.3 Adjustment of Fixed Rent and Tenant's Pro Rata Share. Subject to the foregoing provisions of this Section 3.4, if the measurement of the Premises shall indicate a Floor Area of less than ninety-nine percent (99%) of the Floor Area of the Premises set forth in Subsection 1.1.28 above, then the Fixed Rent and any other applicable provision of this Lease (including, without limitation, Tenant's Pro Rata Share) shall be reduced to conform to the actual measurement, and Tenant shall receive a proportional refund of any Rent theretofore paid to Landlord. If the measurement of the Premises indicates that the actual Floor Area of the Premises exceeds the Floor Area of the Premises set forth in Section 1.1.28 hereof (as same may be increased due to Changes under Section 3.2 above), neither Fixed Rent nor Tenant's Pro Rata Share shall be increased by reason thereof. Landlord and Tenant shall each promptly execute and deliver to the other an amendment memorializing any change to the Fixed Rent, Tenant's Pro Rata Share, or any other applicable provisions of this Lease, made pursuant to this Section 3.4. Any dispute between the parties with respect to the Floor Area of the Premises, the square footage of said non-selling space or the Floor Area of the Shopping Center shall be resolved by arbitration in accordance with the provisions of Section 16.2 below.

#### ARTICLE 4 FIXED RENT, TAXES & PERCENTAGE RENT: DETERMINATION AND PAYMENT

Section 4.1 Fixed Rent. Commencing on the Rent Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord the Fixed Rent, in equal successive monthly installments, in advance, on the first day of each and every calendar month throughout the Term, except that Fixed Rent payable for any partial calendar month during the Term shall be prorated based on a 365-day year. Fixed Rent shall be paid without prior notice, demand, deduction or set off, except to the extent otherwise expressly provided herein.

Section 4.2 Payment of Rent. All Rent shall be mailed or otherwise delivered to Landlord's Mailing Address above or, upon at least thirty (30) days' prior notice to Tenant, to such other address as Landlord may from time to time designate. Landlord acknowledges and agrees that for administrative purposes, Tenant has designated BBY Management Corporation, a New York corporation (the "**Paying Agent**"), to make all Rent payments due to Landlord under this Lease. Said designation (which may be revoked by Tenant at any time) is not intended as, and shall not constitute, an assignment of any rights or obligations of Tenant to the Paying Agent, and Tenant shall remain primarily liable for payment of Rent under this Lease. All payments of Rent received by Landlord from the Paying Agent shall be credited to Tenant as if such payments of Rent had been made by Tenant directly to Landlord.

#### Section 4.3 Real Estate and Other Taxes.

4.3.1 Landlord shall pay on or before the due dates thereof all "Taxes" (defined in Subsection 4.3.3 below) other than personal property taxes levied against tenants. Throughout the Term, Landlord shall cause the Shopping Center to be



maintained entirely within tax parcels and lots that exclude any property not a part of the Shopping Center.

4.3.2 (a) Tenant shall pay to Landlord Tenant's Pro Rata Share of the Taxes which accrue during the Term, subject to the provisions of this Section 4.3. Any Taxes for a real estate fiscal tax year ("**Tax Year**"), only a part of which is included within the Term, shall be adjusted between Landlord and Tenant on the basis of a 365-day year as of the Rent Commencement Date or the date on which the Term expires or earlier terminates, as the case may be, for the purpose of computing Tenant's Pro Rata Share of Taxes. If, by law, any Taxes may, at the option of the taxpayer, be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Landlord shall exercise such option so as to maximize the number of installments, and Landlord shall pay the same as they come due and before any fine, penalty, interest or cost may be added thereto for nonpayment thereof. Tenant shall pay Landlord for a portion of Taxes as follows:

(i) For the period commencing on the Rent Commencement Date and ending on the last day of the first full fiscal Tax Year thereafter (the "**Base Tax Year**"), Tenant shall have no liability for Taxes, the same being deemed to be included in Fixed Rent for such period;

(ii) For each fiscal Tax Year after the Base Tax Year, an amount equal to Tenant's Pro Rata Share of the increase, if any, in Taxes for such fiscal Tax Year over the Taxes for the Base Tax Year.

(b) Notwithstanding the foregoing provisions of Subsection 4.3.2(a), to the extent that the Shopping Center shall not be fully assessed by the applicable governmental authority to reflect at least 176,000 square feet of Floor Area for the Base Tax Year, then any increase in Taxes following the Base Tax Year which shall be attributable to the completion of construction of buildings and improvements to the Shopping Center to reflect such minimum Floor Area shall be added to the Taxes for the Base Tax Year for the purposes of determining Tenant's Pro Rata Share of increases in Taxes pursuant to Subsection 4.3.2(a) hereof. If Tenant shall have paid any increases in Taxes prior to the determination of any such addition, Tenant shall be entitled to an appropriate credit against Tenant's Pro Rata Share of the increase in Taxes for the Tax Year(s) next accruing hereunder.

(c) Landlord shall submit to Tenant a copy of the bill for Taxes issued by the applicable taxing authority, a computation of Tenant's Pro Rata Share of such Taxes, as well as copies of all notices concerning assessments, tax rates, and changes thereto. Tenant shall pay Landlord in the amount required by this Subsection 4.3.2 within thirty (30) days after receipt of such bill (but in no event earlier than the fifteenth (15th) day prior to the date on which such Taxes would become delinquent).

4.3.3 (a) As used herein, "**Taxes**" shall mean all general, *ad valorem* real estate taxes, and assessments for betterments and improvements that are levied or assessed by any lawful authority on the Shopping Center (general or special), including any substitution therefor, in whole or in part, due to a future change in the method of taxation. Taxes shall be reduced by any deferral, abatement, or other tax-lowering adjustment received by Landlord from the taxing authorities. For purposes of computing Tenant's Pro Rata Share of Taxes, Taxes shall not include any: (1) income, excise, profits, estate, inheritance, succession, gift, transfer, franchise, capital, or other tax or assessment upon Landlord; (2) taxes on rents (other than to the extent that such taxes are customarily paid by retail tenants in the state in which the Shopping Center is located), gross receipts or revenues of Landlord from the Premises; (3) fine, penalty, cost or interest for any tax or assessment, or part thereof, which Landlord or its lender failed to timely pay (except if same are caused by an Event of Default); (4) assessment for a public improvement arising from the initial construction or expansion of the Shopping Center or

1 the Premises (it being agreed that all assessments imposed during the Term which are  
2 permitted to be included within Taxes hereunder shall, for the purposes of computing  
3 Tenant's Pro Rata Share thereof, be deemed to have been paid in the maximum number  
4 of installments permitted by the applicable taxing authority); (5) Taxes resulting directly  
5 from an increase in the assessment caused by a sale or ground lease of all or any portion  
6 of the Shopping Center to an Affiliate of Landlord or more than once every five (5) years;  
7 or (6) fees imposed upon Landlord in connection with Landlord's development of the  
8 Shopping Center (including, without limitation, trip generation fees). All Taxes payable  
9 by Tenant pursuant to this Section 4.3 shall be determined as if the Shopping Center was  
10 the only property owned by Landlord. Landlord represents to Tenant that, as of the  
11 Effective Date and, to the best of Landlord's knowledge, as of the anticipated Delivery  
12 Date, no portion of the Shopping Center is or will be (i) subject to or the beneficiary of an  
13 phase-in (of the full amount of the assessment), abatement and/or exemption of Taxes,  
14 (ii) subject to any special assessments or similar charges, or (iii) are included in any  
15 special improvement district(s) which would result in higher sales taxes or other similar  
16 impositions than would exist in the absence of such district(s).

17 (b) Notwithstanding the provisions of Subsection 4.3.3(a) to the  
18 contrary, for so long as the tax lot of which the Premises are a part shall at any time  
19 consist of less than the entire Shopping Center (such tax lot being hereinafter referred to  
20 as the "**Tax Lot**"), then the following shall apply: (i) the term "Taxes" shall mean all  
21 Taxes with respect to the Tax Lot only (and subject to the other provisions hereof  
22 affecting the calculation of Taxes); (ii) "Tenant's Pro Rata Share" shall be determined  
23 with respect to only such Floor Area as is contained in the Tax Lot, but in no event shall  
24 Tenant's Pro Rata Share exceed the Tenant's Pro Rata Share that would be calculated  
25 under this clause (ii) had all of the Floor Area located and/or to be located within the Tax  
26 Lot been Substantially Completed; and (iii) in the event that the square footage allocation  
27 of the Common Areas located within the Tax Lot (as compared to the total Floor Area of  
28 the buildings located within the Tax Lot) is materially greater than the allocation of  
29 Common Areas for the remainder of the Shopping Center, then Tenant's Pro Rata Share  
30 thereof shall be equitably reduced accordingly.

31 4.3.4 Upon Tenant's good faith determination that a contest of the  
32 amount or validity of any assessed valuation of Taxes may be successful, at Tenant's  
33 request, Landlord shall contest the amount or validity of any assessed valuation or Taxes,  
34 failing which, Tenant shall have the right to contest the assessed valuation or Taxes by  
35 appropriate proceedings conducted in good faith, whereupon Landlord shall cooperate  
36 with Tenant, execute any and all documents required in connection therewith and, if  
37 required by any governmental authority having jurisdiction, join with Tenant in the  
38 prosecution thereof. If, as a result of any contest or otherwise, any rebate or refund of  
39 Taxes (a "**Tax Refund**") is received, Tenant shall be entitled to Tenant's Pro Rata Share  
40 thereof (after reasonable and customary expenses incurred by Landlord and/or Tenant in  
41 connection with such contest ("**Contest Costs**") are paid to the party which incurred such  
42 expense out of the Tax Refund promptly upon Landlord's receipt thereof).  
43 Notwithstanding the foregoing provisions of this Section 4.3.4, if Tenant requests that  
44 Landlord contest Taxes hereunder and Landlord, within five (5) days following its receipt  
45 of Tenant's request, notifies Tenant that Landlord refuses to do so because of Landlord's  
46 good faith determination that any such contest will result in an increased assessed  
47 valuation or Taxes, then, if Tenant nevertheless proceeds to contest the Taxes hereunder,  
48 the following shall apply: (A) should such proceeding directly result in an increased  
49 assessed valuation of Taxes, then Tenant shall be responsible for the entire resulting  
50 increase in Taxes during the then remainder of the Term only, as the same become due  
51 and payable to the applicable taxing authority, and (B) should such proceeding directly  
52 result in a decreased assessed valuation of Taxes, then to the extent the Tax Refund is  
53 insufficient to reimburse Tenant for all of its Contest Costs Tenant shall receive from  
54 Landlord any such remaining Contest Costs as an offset against Tenant's Pro Rata Share  
55 of Taxes (it being agreed that to the extent such remaining Contest Costs exceeds the then  
56 remaining installments of Tenant's Pro Rata Share of Taxes during the Term, Tenant

shall receive the amount of such excess as a further offset against the then remaining installments of Fixed Rent hereunder).

Section 4.4 Percentage Rent.

4.4.1 Payment. During and for each full calendar year during the Term, Tenant shall pay annual percentage rent ("**Percentage Rent**") equal to four (4%) percent (the "**Percentage Multiple**") of all "Gross Sales" (hereinafter defined in Subsection 4.4.2) resulting from business conducted in, on or from the Premises during such calendar year in excess of Five Million Dollars (\$5,000,000) (the "**Sales Break Point**") and up to (but not exceeding) Six Million Dollars (\$6,000,000) (the "**Sales Break Limit**"); it being understood and acknowledged that Tenant shall have no obligation to pay Percentage Rent on any Gross Sales during a particular calendar year of less than the Sales Break Point or in excess of the Sales Break Limit. Within sixty (60) days after the close of each calendar year, Tenant shall furnish to Landlord a compilation prepared by an officer of Tenant setting forth the amount of Gross Sales during the preceding calendar year and showing the amount of Percentage Rent, if any, required to be paid by Tenant for such calendar year, provided, however, that Tenant shall not be required to provide such compilation if the amount of Gross Sales for such calendar year is less than ninety percent (90%) of the Sales Break Point or more than ten percent (10%) of the Sales Break Limit. The full amount of any Percentage Rent due shall be paid to Landlord simultaneously with the furnishing of said compilation. Notwithstanding the foregoing, no Percentage Rent shall be payable with respect to the period commencing on the Rent Commencement Date and ending on the December 31 next following the Rent Commencement Date.

4.4.2 Definition of Gross Sales. As used herein, the term "**Gross Sales**" shall mean the total amount of all sales of merchandise or services completed at the Premises by Tenant or any sublessee, licensee or concessionaire of Tenant and any other person or entity operating in the Premises (for purposes of this Subsection 4.4.2 only, collectively, "**Tenant**"), whether for cash, credit or otherwise, including redemption of gift certificates and gift cards. Tenant shall record, at the time of each Gross Sale, all receipts from such sale, whether for cash, credit or otherwise, in a cash register or cash registers, or in such electronic or computer device which records sales in a manner which is generally acceptable by industry standards. The term "**Gross Sales**" shall exclude: (1) proceeds from any sales tax, gross receipts tax or similar tax, by whatever name called, which are separately stated and are in addition to the sales price, (2) *bona fide* transfers or exchanges of merchandise from the Premises to any other stores or warehouses of Tenant or any Affiliates of Tenant, and returns to shippers and manufacturers for credit, (3) refunds or credits given to customers for merchandise returned or exchanged at the Premises (regardless of where or how purchased) and which were originated at the Premises and previously included in Gross Sales, (4) sales of Tenant's fixtures and equipment not in the ordinary course of Tenant's business, (5) to the extent of prior inclusion in Gross Sales, bad debts when written off the books of Tenant, provided that any collections made on account of such bad debts shall be included in Gross Sales when received, not to exceed two percent (2%) of Gross Sales per calendar year or pro rata portion thereof, (6) receipts from vending machines installed solely for the use of Tenant's employees and receipts from pay telephones, (7) sales to employees of Tenant at discount (which, for the purposes of determining Percentage Rent hereunder, shall not exceed two percent (2%) of Gross Sales per calendar year or pro rata portion thereof, as applicable), (8) fees paid to independent third party credit card, charge card, and debit card companies in connection with sales charged to or debited from customers' credit cards, charge cards, or debit cards, as applicable, (9) proceeds from delivery, gift-wrapping and check cashing charges (which, for the purposes of determining Percentage Rent hereunder, shall not exceed two percent (2%) of Gross Sales per calendar year or pro rata portion thereof, as applicable), (10) sums and credits received in settlement of claims for loss or damage to merchandise, (11) separately stated service, finance and interest charges, (12) the dollar value of coupons utilized by customers in the purchase of

merchandise from the Premises, (13) close-out or bulk sales of inventory to jobbers or wholesalers, (14) sales of gift certificates and/or gift cards (provided that redemptions of gift certificates and/or gift cards shall be included in Gross Sales at the time so redeemed), and (15) forfeited deposits.

4.4.3 Books and Records. Tenant shall maintain at the Premises or at its principal office, complete books and records reflecting all elements of Gross Sales. Tenant shall be allowed to maintain its books and records in a computerized form; provided, however, that (i) such computerized books and records provide the same level of information as the books and records described above, are retained for the full record retention period provided for herein, and (ii) promptly upon request, printed copies of any such books and records are made available at Tenant's principal office for inspection by Landlord's representatives who are engaged in inspecting and/or auditing Tenant's books and records as provided herein. Such books and records shall be kept in accordance with generally accepted accounting principles and practices consistently applied and shall be retained by Tenant for at least two (2) years following the end of the calendar year to which they refer.

4.4.4 Landlord's Right to Audit. Landlord and/or Landlord's auditor shall have the right, within three (3) years following the end of any particular calendar year and upon at least ten (10) days prior notice to Tenant (but not more than once per annum), to inspect and/or audit the records of Tenant relating to Gross Sales for such calendar year. If any such audit discloses a deficiency in the Gross Sales reported by Tenant, Tenant shall pay any deficiency in Percentage Rent (or Alternate Rent) owing to Landlord on account of such deficiency, with interest at the Lease Interest Rate from the date such amount was due and payable to Landlord. If such deficiency is in excess of three (3%) percent of the Gross Sales reported by Tenant and Percentage Rent (or Alternate Rent) is then payable, Tenant shall also pay Landlord's reasonable costs of the inspection and audit. Tenant has not and does not make any representation or warranty as to the amount of Gross Sales which are anticipated from the Premises.

4.4.5 Confidentiality. Landlord shall not disclose to any third party Tenant's Gross Sales or the amount of Percentage Rent paid or payable by Tenant, provided, however, that (i) such information was not previously disclosed by Tenant to such third party or to the public generally, and (ii) nothing contained herein shall restrict Landlord from disclosing such information as may be required by applicable Legal Requirements or to its accountants, attorneys, *bona fide* prospective purchasers, or current or prospective Mortgagees or underlying lessors of all or any portion of Landlord's interest in the Shopping Center (provided that each of such recipients shall be bound to the same non disclosure provisions as are imposed upon Landlord).

4.4.6 Disputes. Any dispute between the parties relative to the provisions of this Section 4.4, including, without limitation, the amount of Percentage Rent or Alternate Rent payable by Tenant, shall be submitted to arbitration in accordance with the provisions of Section 16.2 of this Lease.

## ARTICLE 5 COMMON AREAS, THEIR USE AND CHARGES

### Section 5.1 Common Areas: Maintenance.

5.1.1 Maintenance of Common Areas. Landlord shall operate, maintain, repair and replace, or cause to be operated, maintained, repaired and replaced, the Common Areas as required by this Lease and otherwise to the standard by which Common Areas of first-class shopping centers in the state in which the Shopping Center is located are operated, maintained, repaired and replaced, including, without limitation, snow, ice, rubbish and debris removal (including installation and maintenance of sidewalk refuse containers), landscaping (including, without limitation, the trimming and pruning of trees to avoid interference with the use or visibility of canopies or signs on the

exterior of the Premises), adequate lighting, insurance, supervision, use, parking lot paving and striping, drainage, security (as reasonably required), and control of all Common Areas, and Landlord shall comply with all applicable Legal Requirements.

5.1.2 Tenant's Pro Rata Share of Common Areas Charges.

(a) During the Term, Tenant shall pay to Landlord a contribution towards the reasonable costs (hereinafter referred to as the "**Common Areas Charges**") paid by Landlord to operate, maintain, insure and repair, subject to the exclusions set forth in Section 5.1.3 below, the Common Areas including, without limitation, costs related to lighting facilities; curbs, walkways, parking lot patching and repaving; security; trash collection; snow and ice removal; gardening and landscaping; striping of parking areas; reasonable depreciation or amortization of, or rents for, the equipment used in the operation of Common Areas; annual premiums for insurance required to be maintained by Landlord hereunder pursuant to Subsection 10.3.3 below; wages, worker's compensation, unemployment taxes and Social Security taxes of employees, in each case below the level of management, directly and actually performing the above described services (provided however, if such persons perform services for more than one shopping center, such wages, workmen's compensation, unemployment taxes and Social Security taxes shall be allocated between the Shopping Center and such other shopping centers, and Tenant shall be obligated to contribute only to the portion allocated to the Shopping Center); retention pond and storm water lines; and tools consumed in the operation, maintenance, repair and replacement of the Common Areas. Tenant's Pro Rata Share of Common Areas Charges shall be paid in equal monthly installments on the first day of each calendar month, in advance, during each calendar year based on Landlord's reasonable budget (with respect to which budget the amount thereof shall not exceed one hundred five (105%) percent of the Increase (as hereinafter defined) for the most recent calendar year for which such information is available (exclusive of snow removal, utility rate increases and insurance rate increases during such prior calendar year). The Common Areas Charges shall also include an administrative fee equal to five percent (5%) of the total Common Areas Charges for the calendar year in question, excluding therefrom the cost of any replacement or improvement of a capital nature (to the extent otherwise a permissible Common Area Charge), costs relating to insurance and costs of utilities (the "**Administrative Fee**").

(b) For the purposes hereof (x) the phrase "**Base CAM Year**" shall mean the first full calendar year after the Rent Commencement Date occurs; (y) the phrase "**Premises Base Year CAM**" shall mean the Common Areas Charges for the Base CAM Year multiplied by Tenant's Pro Rata Share [provided that this definition (y) is solely for the purposes of calculating the cap on Tenant's Pro Rata Share of increases in the Common Areas Charges over those for the Base CAM Year as hereinafter provided and is not for the purposes of calculating any liability to Tenant for Common Areas Charges for the Base CAM Year], and (z) the phrase "**Increase**" shall mean the increase, if any, in Tenant's Pro Rata Share of Common Areas Charges for a particular calendar year after the Base CAM Year over the Premises Base Year CAM. On and after the Rent Commencement Date, Tenant shall pay as Tenant's Pro Rata Share of Common Areas Charges the following:

(i) For the period commencing on the Rent Commencement Date and ending on the last day of the Base CAM Year thereafter, Tenant shall have no liability for Common Areas Charges, the same being deemed to be included in Fixed Rent for such period;

(ii) For each calendar year, or part thereof, during the Term, after the Base CAM Year, the Increase for such year.

Notwithstanding the foregoing, except with respect to snow and ice removal, utility rate increases and insurance rate increases, which Tenant shall be obligated to pay Tenant's

Pro Rata Share of as otherwise provided herein, the Increase payable by Tenant for the first calendar year after the Base CAM Year shall not exceed one hundred five percent (105%) of the Premises Base Year CAM and the Increase payable by Tenant each subsequent calendar year shall not exceed one hundred five percent (105%) of the Increase for the immediately prior calendar year.

(c) Within one hundred twenty (120) days after the end of each calendar year, Landlord shall provide to Tenant a statement, in reasonable detail, of Common Areas Charges for such year, which statement shall be prepared in accordance with generally accepted accounting principles consistently applied (the “CAC **Reconciliation Statement**”). The CAC Reconciliation Statement shall be certified by Landlord as being accurate and shall be accompanied by a calculation of Tenant’s Pro Rata Share of Common Areas Charges, and payment to Tenant in the amount of any overpayment made by Tenant during the preceding calendar year. If Tenant’s Pro Rata Share of the actual Common Areas Charges for a calendar year shall exceed the aggregate monthly installments paid by Tenant during said calendar year, Tenant shall pay to Landlord the deficiency within thirty (30) days after receipt of such notice. Upon Tenant’s request, Landlord shall promptly deliver to Tenant copies of relevant backup materials (including, but not limited to, contracts, correspondence and paid invoices) reasonably required by Tenant. If Landlord fails to timely remit to Tenant the amount of any overpayment hereunder, Tenant shall have the right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in equity) to offset such amount from payments of Rent next becoming due hereunder, together with interest thereon at the Lease Interest Rate from the date such remittance is due until reimbursement or full satisfaction by credit.

#### 5.1.3 Exclusions from Common Areas Charges.

(a) Common Areas Charges shall not include: (1) the capital cost of any additions to the Common Areas pursuant to an expansion of the Shopping Center; (2) the cost of any replacements or capital improvements to the Common Areas, except that the cost of repaving the parking areas of the Shopping Center may be included within Common Areas Charges so long as such cost is amortized on a straight-line basis over the useful life thereof under generally accepted accounting principles, and is not incurred (A) prior to the expiration of the fifth (5th) full calendar year of the Term, or (B) more than once during each five (5) full calendar years of the Term; (3) the cost of investigating, monitoring or remedying any environmental condition or “Hazardous Substances” or any other “Compliance Costs” (both as hereinafter defined in Subsection 12.4.1); (4) any debt service (including principal and interest) or payments of any judgments or other liens against Landlord; (5) the cost of maintaining, repairing or providing security for interior portions of buildings; (6) Taxes or other taxes levied or assessed against Landlord or the Shopping Center; (7) the cost of compliance with Legal Requirements (including, without limitation, the cost of curing violations or contesting such Legal Requirements or violations), except that Common Areas Charges shall include the cost of compliance with Legal Requirements affecting only the Common Areas provided that same shall (A) apply only to Legal Requirements enacted after the Rent Commencement Date, (B) not be necessitated by the acts or omissions of Landlord or any other tenant or any of their respective agents, subtenants, occupants, contractors or employees, (C) benefit all tenants of the Shopping Center, (D) be amortized on a straight-line basis over the useful life thereof under generally accepted accounting practices, and (E) be similarly imposed on all other tenants of the Shopping Center; (8) any costs resulting from insurance deductibles or any payments made under any self-insurance policy maintained by Landlord to the extent that Tenant’s aggregate Pro Rata Share thereof during the lifetime of the Lease shall exceed a total of \$5,000 for each full calendar year that shall have elapsed during the Term other than the Base CAM Year; (9) any costs which would have been reimbursed or paid for by insurance proceeds had Landlord maintained the insurance required under Section 10.3 hereof and the amount of any judgment or other charge entered or costs assessed against Landlord in excess of the policy limits of the



1 insurance maintained by Landlord under Section 10.3 hereof); (10) those portions of  
2 Landlord's insurance premiums which are reimbursed to Landlord by any other tenant in  
3 the Shopping Center other than through the payment of such tenant's proportionate share  
4 of insurance premiums otherwise includable as part of Common Areas Charges; (11)  
5 sums paid or owed by Landlord to any tenant in the Shopping Center; (12) costs incurred  
6 in connection with the negotiation of leases with, or construction of improvements for,  
7 any tenant in the Shopping Center (including, without limitation, brokerage commissions  
8 and legal fees); (13) costs incurred in connection with lawsuits or other legal actions  
9 (including, without limitation, arbitrations and mediations) instituted or defended by  
10 Landlord; (14) sums incurred as late payment fees, penalties or interest; (15) ground rent;  
11 (16) depreciation [except as expressly permitted pursuant to item 23 below]; (17) costs  
12 that Tenant demonstrates are disproportionately incurred by or on behalf of any one or  
13 more of the tenants in the Shopping Center (including, without limitation, all costs  
14 relating to the operation of any food court in the Shopping Center); (18) electricity costs  
15 for lighting Common Areas later than the "Normal Hours" [hereinafter defined in Section  
16 5.2], other than low-level security lighting; (19) Landlord's advertising, entertainment  
17 and promotional costs for the Shopping Center (including, without limitation, holiday  
18 decorations); (20) costs of acquiring, leasing, restoring, insuring or displaying sculptures,  
19 paintings and other objects of art located within or outside the Shopping Center; (21)  
20 costs and expenses payable to Landlord or its Affiliate, to the extent that such costs and  
21 expenses exceed competitive costs and expenses for materials and services by unrelated  
22 persons or entities of similar skill and experience; (22) repairs resulting from defects in  
23 the original construction of the Shopping Center arising within one (1) year after the Rent  
24 Commencement Date; (23) the cost of mechanized equipment for the maintenance of the  
25 Common Areas (but not the straight-line depreciation thereof over its useful life, as  
26 determined in accordance with generally accepted accounting principles); (24) reserves  
27 for anticipated future expenses; (25) other than the Administrative Fee, any cost or  
28 expense relating to the administration and management of the Common Areas (whether  
29 on-site or off-site) including, but not limited to, overhead, management fees, office  
30 salaries and benefits, office rental, office supplies, dues and subscriptions, office utility  
31 charges, telephone charges and automobile expenses; (26) costs incurred in connection  
32 with the monitoring, maintenance, inspection, or testing of fire alarm systems; (27) costs  
33 and expenses payable to Landlord, or its Affiliate or designee, for the provision of utility  
34 service(s) to the Common Areas, to the extent that such costs and expenses exceed  
35 competitive market rates; (28) costs relating to any Exterior Tenant Areas; or (29) costs  
36 of repairs and replacements required of Landlord under Section 9.2 below except as  
37 otherwise expressly provided thereunder.

38 (b) In addition, if any tenant or other occupant of the Shopping  
39 Center (i) maintains the Common Areas in whole or in part, or any facilities therein, (ii)  
40 provides any services the cost of which would otherwise be includable in Common Areas  
41 Charges, and/or (iii) pays directly for costs which would otherwise be included in the  
42 Common Areas Charges, then the costs associated with or attributable to any of the  
43 foregoing shall be excluded from Common Areas Charges, and the denominator used to  
44 determine Tenant's Pro Rata Share of such costs (and only such costs) shall be reduced  
45 by the Floor Area occupied by such tenant or other occupant.

46 (c) Common Areas Charges for any period during the Term  
47 which constitutes less than a full calendar year shall be equitably prorated.

48 5.1.4 Tenant's Right to Audit. Provided an Event of Default (as  
49 defined herein) has not occurred and is not continuing, Tenant shall have the right, within  
50 three (3) years after receiving any CAC Reconciliation Statement (and not more than  
51 once annually) to audit Landlord's books and records to verify Landlord's calculation of  
52 Common Areas Charges as reflected therein and Tenant's Pro Rata Share thereof. Upon  
53 Tenant's request, Landlord shall promptly deliver to Tenant copies of relevant backup  
54 materials (including, but not limited to, contracts, correspondence and paid invoices)  
55 reasonably required by Tenant. In the event of an error in Landlord's favor, Landlord

1 shall refund the overcharge to Tenant (with interest at the Lease Interest Rate from the  
2 date of Landlord's delivery of the CAC Reconciliation Statement for the audited year  
3 through the date the overcharge is paid) within thirty (30) days after Tenant's demand  
4 therefor, and if the overcharge exceeds three (3%) percent of Tenant's Pro Rata Share of  
5 Common Areas Charges, Landlord shall pay to Tenant the reasonable expenses of the  
6 audit within thirty (30) days after Tenant's demand therefor, failing which, Tenant shall  
7 have the right (in addition to any rights and remedies to which it may be entitled under  
8 this Lease, at law, or in equity) to offset such amount from payments of Rent next  
9 becoming due hereunder, together with interest thereon at the Lease Interest Rate from  
10 the date such remittance is due until reimbursement or full satisfaction by credit.  
11 Landlord shall maintain all books and records pertaining to a calendar year for at least  
12 three (3) years after it delivers to Tenant a CAC Reconciliation Statement for such  
13 calendar year. Tenant shall keep the results of any such audit confidential, provided that  
14 nothing contained herein shall restrict Tenant from disclosing such information as may be  
15 required by applicable Legal Requirements, or to its accountants, attorneys or *bona fide*  
16 prospective assignees or subtenants (provided that each of such recipients shall be bound  
17 by the same non-disclosure provisions as are imposed upon Tenant). Any dispute by  
18 Landlord with respect to an audit by Tenant shall be submitted to arbitration in  
19 accordance with the provisions of Section 16.2 below.

20                   5.1.5       In no event shall Tenant be required to join, participate in or  
21 contribute to any promotional fund, marketing fund or merchants' association.

22                   Section 5.2       Common Areas: Restrictions.

23                   5.2.1       Continuous Access. Except with respect to events covered by  
24 Article 11, no entrances, exits, approaches and means of ingress and egress to, from,  
25 and/or within the Critical Area or the Premises as shown on Exhibit B hereto shall be  
26 interrupted or disturbed by any act or omission of Landlord during the Term, except: (i)  
27 in the event of an emergency or as may be otherwise required by applicable Legal  
28 Requirements, in which event Landlord shall use reasonable efforts to give Tenant  
29 advance notice of same and to minimize interference to Tenant's normal business  
30 operations in the Premises as a result thereof; (ii) perform normal maintenance and repair  
31 obligations; or (iii) in the event that Landlord is required to temporarily close the  
32 Common Areas, for the minimum time legally necessary to prevent a dedication thereof  
33 or an accrual of any rights in any person or the public generally therein; provided that  
34 such closure shall not occur during August, November or December of any calendar year,  
35 and Landlord shall give Tenant at least thirty (30) days' prior notice thereof.

36                   5.2.2       No Alterations. Except with respect to events covered by Article  
37 11, Landlord shall not, without obtaining Tenant's prior written consent in each instance,  
38 which consent may be withheld in its sole discretion: (i) alter the area of the Shopping  
39 Center within the Critical Area or the location, availability, or size of any Common Area  
40 improvement within the Critical Area from that shown on Exhibit B hereto; (ii) construct  
41 or permit to be constructed any structures in the Common Areas of the Shopping Center  
42 within the Critical Area (including, without limitation, any buildings, kiosks, booths,  
43 signs or similar structures in the Common Areas), other than as shown on Exhibit B  
44 hereto; (iii) materially change the entrances or exits to and from the Shopping Center, or  
45 the curb cuts, roadways, drive aisles, sidewalks or other elements of the Common Areas,  
46 or the number, location or layout of parking spaces within the Critical Area from those  
47 shown on Exhibit B hereto. Landlord shall neither perform nor permit to be performed,  
48 any construction, repairs, replacements or maintenance to any portion of the Shopping  
49 Center, including the Premises (other than emergency repairs to utilities and Common  
50 Areas or as required by Legal Requirements) during the months of August, November  
51 and December of any year, without the prior consent of Tenant, which consent may be  
52 withheld in Tenant's sole discretion.



1                   5.2.3     Outparcels; Omni Parcels. In addition to the provisions of  
2 Subsection 5.2.2 above, during the Term, the following restrictions shall encumber and  
3 bind the outparcels (collectively, the “**Outparcels**” and each, individually, an  
4 “**Outparcel**”) designated on Exhibit B hereto as Pad “A”, Pad “B” and Pad “C” as well as  
5 those portions of the shopping center designated on Exhibit B hereto as Omni “A” and  
6 Omni “B” (collectively, the “**Omni Parcels**” and each, individually, an “**Omni Parcel**”):  
7 (a) no more than one building shall be constructed on any Outparcel or Omni Parcel; (b)  
8 no building shall exceed one story in height; (c) no building shall exceed a maximum  
9 height of twenty-two feet (22’) as measured from the finished floor level to the top of the  
10 roof level (exclusive of the height of all types of architectural projections, treatments or  
11 embellishments beyond such roof level, such as, without limitation, parapets, mansards  
12 and signs, as well as all non-architectural elements such as HVAC equipment, satellite  
13 dishes and antennae), provided that such building shall in no event exceed a maximum  
14 height of twenty-four feet three inches (24’ 3”) as measured from the finished floor level  
15 to the highest point on such building or structure (inclusive of the height of all types of  
16 architectural projections, treatments or embellishments thereon, such as, without  
17 limitation, parapets, mansards and signs, as well as all non-architectural elements such as  
18 HVAC equipment, satellite dishes, and antennae); (d) the Floor Area of any building  
19 constructed on an Omni Parcel shall not exceed the Floor Area established therefor on  
20 Exhibit B hereto and the Floor Area of any building constructed on an Outparcel shall not  
21 exceed 11,000 square feet on Pad “A” referred to above or 7,000 square feet on each of  
22 Pad “B” or Pad “C” referred to above; and (e) all Legal Requirements relative to parking  
23 requirements for each Outparcel operation shall be complied with by providing the  
24 requisite number of parking spaces solely within the boundaries of such Outparcel,  
25 without reduction in such number by virtue of the granting of a variance or special  
26 exception. For purposes of this Subsection 5.2.3, the Floor Area of any building  
27 constructed on an Outparcel or Omni Parcel shall also be deemed to include outdoor  
28 balconies, patios or other outdoor areas utilized for retail sales or food or beverage  
29 service (exclusive of drive through or walk-up take-out food or beverage service).

30                   5.2.4     Parking Area. During the Term, Landlord shall maintain in the  
31 Shopping Center, at a minimum, the greater of (i) the number of parking spaces required  
32 by applicable Legal Requirements, without variance, or (ii) 4.50 ground-level parking  
33 spaces for every one thousand (1,000) square feet of Floor Area in the Shopping Center,  
34 with each such space being at least nine (9) feet in width and eighteen (18) feet in length.  
35 Parking spaces shall at all times be clearly marked by painting, striping or otherwise.  
36 Landlord shall not designate specific parking spaces for use by other tenants or occupants  
37 of the Shopping Center within the Critical Area (other than the Outparcels) and except for  
38 the six (6) designated spaces for Circuit City in the rear of its building as shown on  
39 Exhibit B as “Circuit City Car Stereo Parking”, nor shall Landlord permit any person or  
40 entity to use the parking areas other than Tenant, the other tenants and occupants of the  
41 Shopping Center, and their respective employees, agents, subtenants, concessionaires,  
42 licensees, customers, and invitees. There shall be no charge whatsoever levied for the  
43 use of any parking areas within the Shopping Center. Landlord shall not permit  
44 overnight parking in the Shopping Center, other than delivery vehicles or temporary  
45 trailers used by other Occupants of the Shopping Center, but in no event located within  
46 the Critical Area or the triangular piece of land between the Premises and the TJ Maxx  
47 premises and described as “Open Area” on Exhibit B attached hereto.

48                   5.2.5     Lighting. Throughout the Term, Landlord shall keep the  
49 Common Areas fully lighted and open to the customers of the Shopping Center seven (7)  
50 days a week from dusk until 11:00 p.m. Monday through Saturday and until 9:00 p.m. on  
51 Sunday (“**Normal Hours**”). Upon request of Tenant, Landlord shall keep the Common  
52 Areas lighted for as long after Normal Hours as Tenant shall request, provided Tenant  
53 shall pay for a share of the reasonable cost of said requested lighting, which share shall  
54 be equal to the product of (x) such cost, and (y) a fraction, the numerator of which shall  
55 be the number of square feet of Floor Area within the Premises and the denominator of  
56 which shall be the aggregate number of square feet of Floor Area of all premises within

1 the Shopping Center (including the Premises) open later than Normal Hours (excluding,  
2 however, those tenants and occupants who separately control and pay for their own  
3 Common Area lighting). In addition to the foregoing, Landlord shall provide for low  
4 level security lighting from one (1) hour after the close of business in the Premises until  
5 dawn.

6                   5.2.6     Repairs. During the Term, any construction or repair by  
7 Landlord permitted or required under this Lease and undertaken in the Common Areas or  
8 in any other portion of the Shopping Center shall:

9                   (a)     not be performed during the months of August, November, or  
10 December of any year, except in the event of an emergency or as may be otherwise  
11 required by applicable Legal Requirements;

12                   (b)     with respect to the Critical Area only, be commenced only  
13 upon at least five (5) days' prior notice to Tenant (except in an emergency, in which  
14 event Landlord shall only be required to give such notice as is reasonable under the  
15 circumstances); and

16                   (c)     be performed in accordance with the requirements of Section  
17 3.3.6 above and in such a manner so as not to materially interfere with the normal  
18 conduct of any business operations in the Premises.

19                   5.2.7     Rules and Regulations. Tenant shall comply with the rules and  
20 regulations of the Shopping Center as established from time to time by Landlord, within  
21 sixty (60) days after Landlord notifies Tenant thereof, provided they: (i) are reasonable,  
22 (ii) do not adversely affect the normal conduct of any business operations in the  
23 Premises, (iii) do not adversely affect any of Tenant's rights under this Lease, and (iv) are  
24 uniformly enforced against all tenants of the Shopping Center and without prejudice  
25 against Tenant. In the event of any conflict between the provisions of this Lease and any  
26 rules or regulations, the provisions of this Lease shall prevail and govern.

27                   5.2.8     Miscellaneous.

28                   (a)     No Promotional Use. Landlord shall not use or permit the use  
29 of all or any portion of the Common Areas within the Critical Area for retail sales or for  
30 promotional purposes. Notwithstanding the foregoing provision, tenants of the Shopping  
31 Center (including Tenant) within the Critical Area shall be permitted to conduct sidewalk  
32 sales in front of their respective stores only, provided that such sales shall: (A) be  
33 conducted in a manner consistent with sidewalk sales in first-class shopping centers in  
34 the state in which the Shopping Center is located, (B) not materially interfere with normal  
35 pedestrian access over the sidewalks, and (C) not materially interfere with the normal  
36 business operations of Tenant in the Premises or materially impair the visibility of  
37 Tenant's signage. Further notwithstanding the foregoing provision, the tenant under the  
38 Circuit City lease (as identified in Exhibit K-2) may use the parking areas shown on  
39 Exhibit B as "Circuit City Demonstration Area" for temporary sales, promotions and  
40 product demonstration activities customary to its business operations, provided that (aa)  
41 such activities shall occur on not more than four (4) occasions per year, each such  
42 occasion not to exceed seven (7) consecutive days' duration, (bb) such areas shall be  
43 maintained in a clean, safe and sightly manner, (cc) such activities shall be conducted in a  
44 manner consistent with so-called parking lot tent sales in first-class shopping centers in  
45 the state in which the Shopping Center is located, (dd) such activities shall not materially  
46 interfere with normal vehicular or pedestrian access in the parking areas, (ee) such  
47 activities shall not materially interfere with the normal business operations of Tenant in  
48 the Premises or materially impair the visibility of Tenant's signage, and (ff) such  
49 activities shall be conducted totally within the parking areas shown on Exhibit B as  
50 "Circuit City Demonstration Area." Landlord shall not permit any solicitation,  
51 distribution of handbills, picketing, or other public demonstration in the Common Areas,  
52 except as otherwise may be mandated by applicable Legal Requirements.

(b) Trash Compactor & Containers. Tenant shall be permitted to maintain and operate, at no extra charge: (i) a trash compactor in the portion of the Common Areas designated on Exhibit B hereto as "Trash Compactor Pad"; and (ii) a trash container(s) in the portion(s) of the Common Areas designated on Exhibit B hereto as "Trash Container Pad". Tenant, at its sole cost and expense, shall keep the trash compactor and containers neat and clean and repair any damage caused by use and storage of such compactor and containers.

(c) Shopping Carts. Tenant shall be permitted to store its shopping carts in not more than two (2) exterior cart corrals as may be reflected on Exhibits B and D-1 hereto except to the extent the same is not permitted by Legal Requirements. With respect to shopping carts provided by Tenant for the use of its customers, Tenant will use reasonable efforts to periodically remove same from the Common Areas.

(d) Cellular Towers. No transmission and/or reception towers for wireless telephone or internet communications shall be permitted within the Shopping Center. The preceding sentence shall not prohibit Tenant from maintaining rooftop antennae and satellite dishes as set forth in Section 8.1.4 below; nor shall the preceding sentence prohibit other tenants of the Shopping Center from maintaining rooftop antennae and satellite dishes in conjunction with and incidental to their respective retail businesses conducted within the Shopping Center, in each case of the type customarily utilized by tenants in first-class shopping centers.

## ARTICLE 6 UTILITIES

Section 6.1 Utility Service. From and after the Delivery Date and continuing thereafter through the end of the Term, Tenant shall be solely responsible for and shall pay the cost of utilities services (including, without limitation, electricity, gas, water, sanitary sewer, alarm and telecommunications) consumed in the Premises by Tenant. Tenant shall not be obligated to purchase utility service(s) directly from Landlord, or from any utility provider designated by Landlord. Landlord shall provide separate utility meters exclusively serving the Premises, at its sole cost and expense (including, without limitation, all connection, tap-in and hook-up fees). Subject to Landlord's obligations set forth in the immediately preceding sentence, Tenant shall be responsible for all deposits and charges required by any utility companies in connection with opening an account with such utility services, and in the event Tenant selects a utility provider not otherwise providing or anticipated to provide service to any area of the Shopping Center, for increased costs incurred by Landlord due to the installation of utility lines and equipment required by such utility company(ies) solely by reason of providing such service to Tenant (but excluding, in any event, costs incurred by Landlord in connection with completing Landlord's Work and/or complying with its obligations under this Section 6.1). Tenant's entry upon the Premises prior to the Delivery Date shall not constitute a waiver by Tenant of Landlord's obligation to pay the costs of all utility charges incurred in the Premises prior to the Delivery Date. Landlord shall not permit the capacity of utility lines available for use at the Premises to be reduced or overloaded by any other persons or entities. Landlord shall permit Tenant and its telecommunications provider full and free access to, and use of, available telecommunications conduits in the Shopping Center for the provision of telecommunications service to the Premises, subject to such reasonable requirements as Landlord may impose.

Section 6.2 Interruption. Notwithstanding any provision of this Lease to the contrary, in the event utilities serving the Premises are disrupted due to the acts or omissions of Landlord, its agents, contractors, servants or employees, Landlord shall promptly restore the affected utilities at Landlord's sole cost and expense. If the disrupted utilities are not restored within forty-eight (48) hours after the Landlord has knowledge of the disruption, and Tenant is unable to conduct its normal business in the

Premises as a result thereof, Rent shall be equitably abated during the period of disruption.

## ARTICLE 7 SIGNS

Section 7.1 Tenant's Building Signage. Landlord, at its own cost and expense, shall supply and install signage (and obtain all permits and approvals therefor) as part of Landlord's Work in accordance with Exhibits D, D-1, and F hereto, and with the additional provisions of this Lease. Thereafter, Tenant shall have the exclusive right during the Term, at its sole cost and expense, to erect, maintain, and replace (subject to the limitations set forth herein) on the Allowed Signage Area (as defined herein) signs (including, without limitation, under-canopy or blade signs), banners (including temporary banners placed on the storefront of the Premises), awnings, and flags of such size, design and color as Tenant, from time to time, may desire, subject to compliance with applicable Legal Requirements. The foregoing notwithstanding, all such banners shall be professionally prepared and no such banners may be displayed (i) on more than four (4) occasions per calendar year (or such greater number of times per calendar year as any other tenant or occupant in the Shopping Center may be allowed to display similar such banners), nor (ii) for periods of more than thirty (30) consecutive days year (or such greater number of consecutive days as any other tenant or occupant in the Shopping Center may be allowed to display similar such banners). As used herein "***Allowed Signage Area***" shall mean the storefront of the Premises and, to the extent any other tenants in the Shopping Center are allowed with respect to their respective premises, any exposed exterior walls of the Premises and the side walls of any entrance design elements. Tenant may erect and maintain in the interior of the Premises any signs it may desire, provided that same are professionally prepared.

Section 7.2 Pylon/Monument Signage. Landlord shall provide pylons at the locations shown on Exhibit B hereto during the entire Term, and obtain all permits and approvals therefor. Landlord, as part of Landlord's Work, shall obtain all governmental approvals and permits for, and shall procure and install, Tenant's sign panel(s) on all sides of such pylons, in accordance with the provisions of Article 3 and Exhibits D and F hereto. The dimensions of Tenant's pylon sign panel(s) shall be at least as large as those of other occupants of the Shopping Center, and shall be located in the position designated on Exhibits D and F hereto. In addition, if Landlord constructs or makes available to any other tenant or tenants in the Shopping Center any other signage located in the Common Areas (other than pylon or monument signs located on Outparcels or Omni Parcels that are used exclusively by the tenants of such Outparcels or Omni Parcels, respectively, provided that no such pylons or monuments located on Outparcels or Omni Parcels shall exceed the height of any shopping center pylon that contains or may be required to contain Tenant's signs), such signage shall also include Tenant's identification sign, as shown on Exhibit F hereto, which shall be at least as high (in relation to other sign panels thereon) as Tenant's signs are on the pylons described in Exhibits D and F and at least as large as the largest sign made available to such other tenant or tenants. Landlord shall maintain all pylons in good order and repair, and allow Tenant access to replace its signs thereon, at Tenant's cost and expense. Tenant shall be responsible for maintaining and repairing Tenant's panels thereon. Landlord shall not change or alter the location, structure, height or general appearance of the pylons containing Tenant's panels without obtaining Tenant's prior consent. The cost of maintaining all pylons bearing Tenant's sign panel(s) [but not the cost of individual tenants' signs thereon or the cost of the construction of the pylons] and the cost of any electricity used to illuminate them, shall be includable in Common Areas Charges.

Section 7.3 Signage: Alteration/Removal/Allocation. Tenant shall have the right, from time to time, without Landlord's approval, to change its signs on the storefront and exterior of the Premises, as well as on any pylon, in each case consistent with signage customarily found in first class shopping centers, provided that the area of

1 the new sign is no larger than the area of the sign which it replaces and that the method of  
2 construction and attachment is substantially the same and Tenant shall repair any damage  
3 caused by any such modifications. Upon the expiration or earlier termination of the  
4 Lease, Tenant shall remove its signs from the fascia or other exterior walls of the  
5 Premises and from any pylon, and shall repair any damage occasioned thereby. The  
6 signage rights granted to Tenant pursuant to this Article 7 shall, at Tenant's option, be  
7 allocated to or between Tenant and/or any subtenant(s) of all or any portion of the  
8 Premises. All signage installed by Landlord and Tenant hereunder shall comply with  
9 applicable Legal Requirements.

10 Section 7.4 Cooperation. Landlord, upon request, shall execute any  
11 consents or applications which may be required by applicable Legal Requirements to  
12 permit the placement, installation, and/or replacement by Tenant of any signs on any part  
13 of the Premises or on any pylon, to which Tenant may be entitled under this Lease,  
14 provided same does not subject Landlord to any liability, cost or obligation.

15 Section 7.5 Signage Restrictions and Criteria.

16 7.5.1 During the Term, no exterior identification signs attached to any  
17 building of the Shopping Center shall be of the following type: (i) flashing, moving or  
18 audible signs; (ii) signs employing exposed raceways (other than individual raceway  
19 signs that do not exceed a total of thirty-six (36) square feet in area and that are  
20 conforming in color and design with the buildings to which they are affixed), exposed  
21 neon tubes, exposed ballast boxes, or exposed transformers, provided that Tenant shall  
22 have the right to employ any methods necessary for the installation of internally  
23 illuminated self-contained channel letters; or (iii) paper or cardboard signs other than  
24 professionally prepared interior window signs advertising special sales within the subject  
25 premises, temporary signs (exclusive of contractor signs), stickers or decals, provided,  
26 however, the foregoing shall not prohibit the placement at the entrance of each such  
27 premises of (A) small stickers or decals which indicate hours of business, emergency  
28 telephone numbers, credit cards accepted, and other similar information, and/or (B) a  
29 sticker or decal which contains the phrase "no solicitation" or words of like import. No  
30 billboard signs shall be permitted within the Shopping Center.

31 7.5.2 Landlord shall not permit any obstructions (including, without  
32 limitation, any trees, bushes or other landscaping, scaffolding or architectural details) to  
33 obscure Tenant's storefront, storefront signs or other exterior wall signs (where permitted  
34 hereunder) or any pylons, monuments or other freestanding signs containing Tenant's  
35 sign. No other tenant's premises in the Shopping Center containing less Floor Area than  
36 the Floor Area of the Premises shall have: (i) building signage possessing more total  
37 square footage than the total square footage available for use by Tenant, or a maximum  
38 height greater than the maximum height of Tenant's building signage, as measured from  
39 the finished floor level to the highest point on such signage, or (ii) a building and  
40 entrance design element higher or wider than the height or width of the building and  
41 entrance design element of the Premises; provided that the foregoing shall not require the  
42 alteration of any other tenant's then existing signage or building merely as a consequence  
43 of alterations thereafter made to Tenant's signage or building.

44 ARTICLE 8  
45 ALTERATIONS AND IMPROVEMENTS

46 Section 8.1 Alterations and Improvements.

47 8.1.1 Tenant shall not perform any structural or exterior alterations or  
48 improvements to the Premises (except to the extent same pertain to Tenant's Work)  
49 without the prior approval of Landlord, provided, however, that Tenant's alterations of  
50 the exterior of the Premises that conform to Tenant's then-current prototypical storefront  
51 elevation and that are architecturally harmonious with the Shopping Center shall not  
52 require Landlord's consent. All work performed by Tenant in connection with structural

1 and non-structural alterations or improvements, whether exterior or interior, shall be done  
2 at Tenant's sole cost and expense, in a good and workmanlike manner and in compliance  
3 with all applicable Legal Requirements. The provisions of this Section 8.1 shall not  
4 apply to Tenant's building signage, which shall be governed by the applicable provisions  
5 of Article 7 above.

6 8.1.2 Tenant may, from time to time, at its sole cost and expense,  
7 without the prior approval of Landlord, make non structural alterations and non-structural  
8 improvements to the interior of the Premises as Tenant deems necessary or desirable,  
9 including, but not limited to, electrical systems, heating, ventilation and air conditioning  
10 and other mechanical systems, installation of fixtures and equipment, painting, and wall  
11 and floor coverings. All such interior non-structural alterations and interior non-  
12 structural improvements to the Premises shall be done at Tenant's sole cost and expense,  
13 in a good and workmanlike manner and in compliance with all applicable Legal  
14 Requirements.

15 8.1.3 Tenant shall have the right to subdivide the Premises into not  
16 more than two (2) separate spaces, each of which may have its own front entrance and  
17 access to the loading docks in the rear of the Premises, as well as separately sub-metered  
18 utilities; *provided, however*, that each such subdivided space shall contain approximately  
19 the same consistent depth as that applicable to the Premises as a whole, subject, however,  
20 to reasonable deviations to accommodate loading, storage, ingress/egress and corridor  
21 requirements.

22 8.1.4 Tenant shall have the right to erect and maintain an antenna and a  
23 satellite dish on the roof of the Premises, provided that Tenant: (i) obtains Landlord's  
24 prior approval of its plans for the installation of such equipment, (ii) uses a contractor  
25 designated or approved by Landlord for all roof penetrations so as not to violate or  
26 invalidate any roof warranties maintained by Landlord, (iii) maintains the area where roof  
27 penetrations are made while Tenant's equipment is present, (iv) removes any such  
28 equipment at the conclusion of the Term, (v) repairs any damage to the roof caused by  
29 the making of the roof penetrations, including, but not limited to, the repair of the roof  
30 penetrations upon the removal of any equipment installed thereon, and (vi) erects and  
31 maintains such equipment in accordance with applicable Legal Requirements. Any  
32 satellite dish or antenna installed by Tenant shall be properly screened from the view of  
33 the remainder of the Shopping Center.

34 8.1.5 Landlord shall execute and return to Tenant all appropriately  
35 completed building department or equivalent applications within ten (10) days after  
36 Tenant's request therefor, and will reasonably cooperate with Tenant in the permitting  
37 process.

38 8.1.6 If any violation of any applicable Legal Requirement which is  
39 noted against the Shopping Center or the Premises (other than a violation caused by  
40 Tenant) prevents Tenant from obtaining a building permit for any alterations or a  
41 certificate of occupancy, then, upon request by Tenant, Landlord shall promptly and  
42 diligently cause such violation to be removed of record to the extent required to permit  
43 Tenant to obtain its building permit or certificate of occupancy, as the case may be.

44 8.1.7 Landlord shall not make any alterations to the Premises  
45 (including, without limitation, changing the design, color or materials of the exterior of  
46 the Premises) nor shall Landlord construct an additional floor or floors above the  
47 Premises. Landlord shall neither make nor permit to be made any alterations to the  
48 exterior architectural theme of the remainder of the Shopping Center (as shown on  
49 Exhibit D-2 hereto) which would be inconsistent with a first-class shopping center in the  
50 state in which the Shopping Center is located (exclusive of other tenants' entrance  
51 features) without the prior consent of Tenant.



ARTICLE 9  
REPAIRS

Section 9.1 Tenant's Repairs. Subject to the provisions of Articles 10 and 11 hereof, and except as otherwise provided in Section 9.2 below, Tenant shall maintain in good condition and repair, at its sole cost and expense: (i) the non-structural, interior elements of the Premises (including plate glass and doors and the electrical, plumbing, mechanical, and/or alarm systems located in, or serving, exclusively the Premises); (ii) the heating, ventilation and air conditioning ("*HVAC*") units exclusively serving the Premises (iii) any damage to the portions of the Premises to be maintained by Landlord to the extent occasioned by (A) the act or negligence of Tenant, its employees, agents or contractors (other than ordinary wear and tear) or (B) an Event of Default by Tenant; and (iv) any of Tenant's signs. With respect to Tenant's maintenance obligations to the HVAC units, Tenant shall procure a routine maintenance service contract providing for the periodic maintenance of the HVAC units. All repairs and replacements on Tenant's part to be performed hereunder shall be at Tenant's sole cost and expense, and performed in a good and workmanlike manner in accordance with all applicable Legal Requirements.

Section 9.2 Landlord's Repairs. Subject to the provisions of Articles 10 and 11 hereof, Landlord shall perform, or cause to be performed, as the same shall from time to time be necessary, all repairs and replacements to the following:

(a) the buildings of the Shopping Center as necessary to maintain same in good condition and repair (including, without limitation, repainting the exterior walls of the buildings of the Shopping Center (including, without limitation, the Premises)) as same may be reasonably required from time to time during the Term;

(b) the structural elements of the Premises, which shall be deemed to include, without limitation, the roof joists, columns, footings, foundation, exterior walls (including, without limitation, repainting, but excluding plate glass, storefront windows, doors, door closure devices, window and door frames, molding, locks and hardware, and painting or other treatment of interior walls), floor (but not the floor covering, unless the same is damaged as a result of a floor defect or settling), and the structural elements of any building of which the Premises may be a part;

(c) the roof, gutters, flashings, downspouts and scuppers;

(d) the electric, gas, water, sanitary sewer, and other public utility lines serving the Premises, to the point of connection to the Premises;

(e) all electric, gas, water, sanitary sewer, and other public utility lines and ducts in or passing through the Premises which do not exclusively serve the Premises; and

(f) the non-structural elements of the Premises (including, without limitation, the HVAC units (other than routine maintenance as required pursuant to the maintenance contract required to be maintained by Tenant as set forth in Section 9.1), the doors and the electrical, plumbing, mechanical, and/or fire alarm systems located in or serving the Premises) until the first (1st) anniversary of the Delivery Date, and thereafter for such period of time and to the extent any such non-structural elements are covered by any contractors', manufacturers', vendors', or insurers' warranties or guarantees; and

(g) any damage to the Premises or the Shopping Center which is occasioned by (A) the act or omission of Landlord, its employees, agents or contractors, or (B) any breach by Landlord of any provision of this Lease.

All repairs and replacements on Landlord's part to be performed hereunder shall be at Landlord's sole cost and expense (and not includable in Common Areas Charges, except that (x) one hundred percent (100%) of the cost of item (d) set forth above that exclusively serves the Premises, (y) Tenant's Pro Rata Share of the cost of common trunk lines serving all tenants of the Shopping Center, and (z) Tenant's Pro Rata Share of the cost of item (e) set forth above that serves the Premises and two or more other tenants of the Shopping Center, shall be includable, subject to all of the provisions of Subsection 5.1.3 above and provided further that such repairs are not required as a result of defects in the original construction or installation of such utility lines and ducts and such costs are amortized (to the extent allowable) on a straight-line basis over the useful life thereof under generally accepted accounting principles), performed in a good and workmanlike manner in accordance with all applicable Legal Requirements, and without material interference with or disruption to the normal conduct of any business operations in the Premises. Landlord shall give Tenant at least five (5) days' prior notice of any repairs or replacements to, or which would otherwise materially and adversely affect the normal conduct of any business operations in, the Premises (except in the case of an emergency posing imminent risk of material harm to persons or property, in which event Landlord shall only be required to give such notice as is reasonable under the circumstances). If, in Tenant's reasonable judgment, Landlord's repairs would materially interfere with or disrupt the normal conduct of any business operations in the Premises, except in the case of an emergency posing imminent risk of material harm to persons or property, Landlord shall perform such repairs only after the regular hours of operation of Tenant and any other occupant of the Premises (or any portion thereof), and Landlord shall reimburse Tenant for the reasonable costs and expenses incurred by Tenant in connection with such "after hours" repairs, including, without limitation, utilities charges and security expenses. In the event Landlord does not reimburse Tenant for any amounts payable to Tenant hereunder within twenty (20) days after Tenant's demand therefor, Tenant shall have the right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in equity) to offset such amounts against fifty percent (50%) of the Fixed Rent, together with interest thereon at the Lease Interest Rate from the date of outlay until reimbursement or full satisfaction by credit, it being agreed that (x) Tenant shall, as applicable, be entitled to offset against larger percentages of each successive installment of Fixed Rent if the aforesaid fifty percent (50%) percent offset is insufficient to reimburse Tenant in full, taking in to account the then remaining number of installments of Fixed Rent due and payable by Tenant hereunder, and (y) the reference in this subsection to "fifty percent (50%) percent" shall be increased to "one hundred (100%) percent" with respect to offsets pertaining to Tenant's performance of Landlord's Work or repairs and restoration work under Section 11.1 hereof.

**Section 9.3 Legal Compliance Work.** Except as hereinafter expressly provided, Landlord shall be responsible, at its sole cost and expense (and not includable in Common Areas Charges, unless specifically allowed under Article 5 above), for performing all "Legal Compliance Work" (hereinafter defined). Notwithstanding the foregoing, Tenant shall be responsible, at its sole cost and expense, for the performance of Legal Compliance Work: (a) pertaining to the interior elements of the Premises which are neither structural nor comprise the major building systems serving the Premises, unless Tenant is obligated to maintain such portions of the Premises as specifically set forth herein; (b) required solely as a result of Tenant's specific manner of use of the Premises (i.e., are not of general applicability to tenants and occupants of the Shopping Center); or (c) required solely as a result of any alterations or modifications to the Premises performed by Tenant pursuant to Article 8, provided, however, that the foregoing shall not relieve Landlord of its obligations to perform: (x) Landlord's Work in accordance with all Legal Requirements, and (y) the repairs required in this Lease. As used herein, "**Legal Compliance Work**" shall mean any obligation, addition, alteration, improvement, or rebuilding, structural or otherwise, to or of the Premises, the Shopping Center, or any part thereof, as applicable, which may be required by reason of any Legal Requirement.



ARTICLE 10

INDEMNIFICATION, INSURANCE AND WAIVER OF SUBROGATION

Section 10.1 Mutual Release, Waiver of Subrogation and Mutual Indemnification.

10.1.1 Mutual Waiver of Claims. Landlord and Tenant, on their own behalf and on behalf of anyone claiming under or through either one by way of subrogation, hereby release and waive all rights of recovery and causes of action against each other from any and all liability for any loss or damage to property or resulting from damage to such property (and, in either case, any resulting loss of business or rental income), whether caused by the negligence or fault of the other party, which is normally insured under Special Form property insurance (formerly known as "All-Risk") and time element insurance required to be maintained hereunder. In the event either Landlord or Tenant is a self-insurer or maintains a deductible (as either may be permitted hereunder), then the self-insuring party or the party maintaining the deductible hereby releases the other party from any liability arising from any event which would have been covered had the required insurance been obtained and/or the deductible not been maintained.

10.1.2 Waiver of Subrogation. Landlord and Tenant shall cause each property insurance policy carried by either of them insuring the Premises, the contents thereof, or the Shopping Center, to provide that the insurer waives all rights of recovery by way of subrogation or otherwise against the other party hereto in connection with any loss or damage which is covered by such policy or that such policy shall otherwise permit, and shall not be voided by the releases provided above.

10.1.3 Mutual Indemnification.

(a) Except as otherwise provided in Subsections 10.1.1 and 10.1.2 above, Tenant covenants to defend and indemnify Landlord and hold Landlord harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, (x) in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Premises, or any part thereof, or (y) occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, or licensees, except to the extent such claims, actions, damages, liability and expense are caused by the acts or omissions of Landlord, its agents, contractors, licensees, employees, or other tenants and occupants, or for which any of said parties may be statutorily liable.

(b) Except as otherwise provided in Subsections 10.1.1 and 10.1.2 above, Landlord covenants to defend and indemnify Tenant and hold Tenant harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, (x) in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon any portion(s) of the Shopping Center (excluding the Premises and any portion of the Common Areas used by Tenant at the time of the applicable incident for outside sales as provided herein), or (y) occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, employees, servants, tenants (other than Tenant), occupants or licensees, except to the extent such claims, actions, damages, liability and expense are caused by the acts or omissions of Tenant, its agents, contractors, licensees or employees, or for which any of said parties may be statutorily liable.

Section 10.2 Tenant's Insurance.

10.2.1 Tenant's Insurance. Tenant, at its own cost and expense, shall maintain in full force and effect from and after the Delivery Date and throughout the Term: (i) commercial general liability insurance protecting and insuring Tenant, naming Landlord and any Mortgagee designated in writing by Landlord as "additional insured-lessor" for claims arising out of the use or occupancy of the Premises by Tenant and the

obligations assumed by Tenant under this Lease, and having a combined single limit of liability of not less than Ten Million Dollars (\$10,000,000) for bodily injury, death and property damage liability; (ii) Special Form (formerly known as "All-Risk") property insurance, on a replacement cost basis, in an amount adequate to cover the full insurable replacement value of all of Tenant's Property; and (iii) workers compensation insurance at all times and to the extent required by Legal Requirements. Tenant may carry any of its insurance under "blanket policies" covering the Premises and other locations it or any Affiliate of Tenant owns or leases, provided that: (A) the amount of the total insurance available shall be at least the protection equivalent to separate policies in the amounts herein required, and (B) in all other respects, any such policy or policies shall comply with the applicable provisions of this Article 10.

10.2.2 Self-Insurance. All insurance required to be maintained under this Section 10.2 may be provided under: (i) an individual policy covering this location; (ii) a blanket policy or policies which includes other liabilities, properties and locations of Tenant or its Affiliates; (iii) a plan of self-insurance, provided that Tenant or any guarantor of Tenant's obligations under this Lease maintains, during the period of such self-insurance, a net worth of at least One Hundred Million Dollars (\$100,000,000) determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"); or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by Tenant in compliance with this Section 10.2, then Tenant shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Two Hundred Fifty Thousand Dollars (\$250,000) unless Tenant complies with the requirements regarding self-insurance pursuant to clause (iii) above.

### Section 10.3 Landlord's Insurance.

10.3.1 Liability Insurance. Landlord shall maintain in full force and effect on and after the Delivery Date and throughout the Term commercial general liability insurance with regard to the Common Areas protecting and insuring Landlord, naming Tenant as "additional insured-lessee", and having a combined single limit of liability of not less than Ten Million Dollars (\$10,000,000) for bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance under "blanket policies" covering the Shopping Center and other properties provided that: (i) the amount of the total insurance available shall be at least the protection equivalent to separate policies in the amounts herein required, and (ii) in all other respects, any such policy or policies shall comply with the applicable provisions of this Article 10.

10.3.2 Special Form Property Insurance. Landlord shall procure and maintain in full force and effect on and after the Effective Date and throughout the Term, Special Form (formerly known as "All-Risk") property insurance (including loss of rents for a minimum period of one (1) year) and endorsements for coverages for flood, earthquake (but only if endorsements for earthquake are customarily maintained by landlords in other first-class shopping centers in the Dallas/Fort Worth, Texas metropolitan area), windstorm, earth movement [sinkholes] (but only if endorsements for earth movement are customarily maintained by landlords in other first-class shopping centers in the Dallas/Fort Worth, Texas metropolitan area), demolition, increased cost of construction and contingent operation of building laws coverages, on a replacement cost basis, in an amount adequate to cover the full insurable replacement value of all of the buildings (including the Premises) and other insurable improvements in the Shopping Center; provided, however, in no event shall such insurance cover Tenant's Property. All policies required to be maintained by Landlord pursuant to this Subsection 10.3.2 shall provide that any proceeds thereof shall be deposited with Landlord's Mortgagee (to the extent Landlord's Mortgagee so requires), or if there is no Mortgagee or if there is a Mortgagee but the Mortgagee does not so require, to Landlord, in either event to be held in trust by such party and disbursed only in accordance with the provisions of, and for the

purposes set forth in, Section 11.1 hereof. The property insurance required to be maintained by Landlord pursuant to this Section shall not have deductibles exceeding One Hundred Thousand Dollars (\$100,000) without Tenant's prior consent.

10.3.3 Tenant's Pro Rata Share of Insurance Premiums. Commencing on the second (2<sup>nd</sup>) full calendar year of the Term, Tenant shall reimburse Landlord for Tenant's Pro Rata Share of the reasonable Increase in insurance premiums attributable to the policies required to be maintained by Landlord pursuant to this Section 10.3 as part of Common Areas Charges. If the rates for any insurance Landlord is required to carry hereunder are increased as a result of the use or other activity of any other occupant of the Shopping Center, the amount of such increase shall be excluded from Common Areas Charges. In the event Tenant's particular use of the Premises, other than as a retail store generally or other than as a typical "Bed Bath & Beyond" store as contemplated herein, shall cause an increase in the amount of insurance Landlord is required to carry hereunder, Tenant shall be responsible for the entire amount of such additional costs. To the extent that Landlord receives a dividend, credit, rebate or other return of a premium which had previously been included in Common Areas Charges, Landlord shall promptly refund Tenant's Pro Rata Share of such dividend, credit, rebate, or return to Tenant. Tenant's Pro Rata Share of any insurance premium for any period during the Term which constitutes less than a full calendar year shall be equitably prorated. The provisions of this Subsection 10.3.3 shall survive the expiration or earlier termination of this Lease.

#### Section 10.4 General Insurance Requirements.

10.4.1 All insurance required to be maintained by the parties under this Lease shall be maintained with insurance companies qualified to do business in the state in which the Shopping Center is located, and rated at least A-/VIII by the most current Best's Key Rating Guide (or its equivalent, if such Guide ceases to be published). Each party shall use its diligent efforts to have its insurers provide thirty (30) days [ten (10) days in the event of non-payment of premium] prior notice to the other party of cancellation or non-renewal of any policy required hereunder. Each party shall provide to the other duly executed certificates evidencing the insurance coverage described in Sections 10.2.1 and 10.3 above.

10.4.2 The liability insurance requirements under Sections 10.2 and 10.3 above shall be reviewed by Landlord and Tenant every five (5) years for the purpose of mutually increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. The replacement value of the buildings and other insurable improvements constituting the Shopping Center shall be re-evaluated from time to time at the request of either Landlord or Tenant.

### ARTICLE 11 FIRE AND OTHER CASUALTY; EMINENT DOMAIN

#### Section 11.1 Fire and Other Casualty.

##### 11.1.1

(a) Except as otherwise provided in this Section 11.1, if all or a portion of the Premises, the Common Areas (including all improvements thereto) or other buildings in the Shopping Center shall be damaged by fire or other casualty, then so long as no Event of Default has occurred and is continuing Landlord shall promptly (i) rebuild and restore the Premises to the condition existing immediately prior to such fire or other casualty (which restoration shall include all Tenant's Work and all other leasehold improvements performed by Tenant), but shall not include any of Tenant's Property, (ii) rebuild and restore buildings comprising at least 75% of the total non-Premises Floor Area located within that portion of the Shopping Center shown as "75% Restoration

Area” on Exhibit B hereto and at least 50% of the total Floor Area located within that portion of the Shopping Center shown as “50% Restoration Area” on Exhibit B hereto to substantially the condition in which the same existed immediately prior to such fire or other casualty so that same shall be occupied or ready for occupancy following reconstruction; and (iii) rebuild and restore the Common Areas to substantially the condition as existed immediately prior to such fire or other casualty, or in such other manner (complying with all Legal Requirements and any other applicable requirements of this Lease) as shall be commercially reasonable under the circumstances, provided that in any event the rebuilt and restored Common Areas shall include without limitation (A) pylon signage suitable to Tenant, (B) unimpeded vehicular access to and from each of Ralph Hall Parkway and I-30 Eastbound Frontage Road and (C) not less than 4.5 parking spaces for each 1,000 square feet of Floor Area within each of the 75% Restoration Area and the 50% Restoration Area plus each additional area of the Shopping Center Landlord elects to reconstruct (all of the foregoing work is hereinafter referred to as the “**Primary Restoration**”). With respect to buildings or improvements within the Shopping Center which are damaged by fire or other casualty but which are not required to be restored by Landlord as part of the Primary Restoration, Landlord shall promptly either (1) rebuild and restore all or portions of the same to substantially the condition in which they existed immediately prior to such fire or other casualty, or (2) raze the remaining portions of such buildings or improvements not rebuilt, remove all debris resulting therefrom, and pave such areas for parking or landscape such areas in a sightly manner (all of the foregoing work is hereinafter referred to as the “**Secondary Restoration**”). The proceeds of the policies required to be obtained and maintained by Landlord pursuant to Section 10.3.2 hereof shall, to the extent necessary, be used for the performance of the Primary Restoration and the Secondary Restoration. In the event such insurance proceeds are insufficient to complete such work, Landlord shall provide the balance of the amount necessary to rebuild or restore the Shopping Center in the manner provided in this Section 11.1.

(b) Notwithstanding the foregoing, if any portion of the Premises are so damaged or destroyed, Tenant shall have the right to require Landlord to make changes to the Premises in the course of, and as part of, such rebuilding or restoration work to the extent that Tenant would have been permitted to make such changes under Article 8 and otherwise to the extent such changes are reasonably acceptable to Landlord. If the net cost and expense of such rebuilding or restoration work is increased solely as a result of such changes (taking into consideration any and all actual reduced and additional costs resulting from such changes and/or other cost savings arising therefrom), then Tenant shall pay to Landlord, as Additional Rent, the amount of such net increase, which amount shall be due and payable within thirty (30) days after Landlord has delivered to Tenant backup information evidencing such increase (including, without limitation, receipted invoices) as may be reasonably required by Tenant (but in no event earlier than the occurrence of the date on which possession of the restored areas of the Premises are delivered to Tenant). To the extent that Landlord’s substantial completion of such rebuilding or restoration work is delayed solely as a result of such changes (taking into consideration any and all reasonable time savings to Landlord resulting from such changes), then the applicable period(s) specified in Section 11.1.2 below shall be appropriately adjusted to the extent of such net delay.

(c) If, in Tenant’s reasonable judgment, any damage to the Premises renders all or any portion of the Premises unusable for the conduct of Tenant’s business or, in the case of damage to the Shopping Center, materially interferes with the normal conduct of any business operations in the Premises, the Rent shall be equitably reduced or totally abated based upon the extent to which the remaining portion of the Premises may, in Tenant’s reasonable judgment, be utilized for its normal conduct of business.

(d) In the event of a fire or other casualty which shall damage or destroy all or a portion of the Premises, the buildings in the Shopping Center and/or the

Common Areas, which fire or other casualty is not insurable under the casualty insurance coverage required to be carried by Landlord pursuant to Article 10 hereof (as opposed to a casualty which is (i) intended to be covered by the policies described in Subsection 10.3.2 hereof but which, in fact, are not covered by the policies actually obtained by Landlord; or (ii) covered by such policies, but with respect to which the insurer refuses to pay the proceeds thereof), then Landlord's responsibility for the repair and restoration of such damage or destruction shall be limited to an expenditure of Two Hundred Thousand (\$200,000.00) Dollars, in addition to any insurance proceeds which may have been paid to or on behalf of Landlord (collectively, the "**Uninsured Obligation**"). If the Uninsured Obligation is not sufficient to rebuild and restore the Premises, the other buildings and/or the other portions of the Common Areas, as the case may be, then Landlord shall have no obligation to rebuild and restore the same (but may, in any event, elect to do so), provided that Landlord shall give Tenant notice thereof within forty-five (45) days following such fire or other casualty, which notice shall include an independent architect's certification as to the estimated cost of the repair and restoration work to the Premises and Common Areas (the "**Restoration Cost**"). Tenant shall have the right, but not the obligation, exercisable within thirty (30) days after receipt of Landlord's notice, to give Landlord notice of its intention to provide the funds (the "**Remaining Funds**") for the repair and restoration of the Premises and/or the Common Areas, which Remaining Funds shall not exceed the difference between the Restoration Cost and the Uninsured Obligation. If Tenant shall elect to provide the Remaining Funds, then Landlord shall promptly commence and diligently complete such rebuilding and restoration as otherwise provided and subject to the provisions of this Article, and the Remaining Funds shall be paid to Landlord within the same period of time as specified in Section 11.1.1 (b) for the payment of net costs and expenses resulting from Tenant changes. If Tenant shall decline to provide the Remaining Funds for such rebuilding and restoration, then Tenant shall have the right to terminate this Lease as of the end of such thirty (30) day period, in which event neither party shall have any liability to the other hereunder (except as expressly provided for herein).

(e) If this Lease is not terminated pursuant to this Section 11.1, then Tenant shall reopen for business within the Premises for at least (but not more than) one (1) day within one hundred twenty (120) days after completion of the Primary Restoration and Secondary Restoration as required hereunder (but in all events subject to Excused Periods).

(f) Notwithstanding the foregoing, if (A) this Lease shall be terminated pursuant to this Section 11.1.1 and (B) Landlord or any of Landlord's affiliates shall commence to reconstruct the Shopping Center (or a shopping center of a substantially similar type to the Shopping Center on the same site) on or before the date that is five (5) years after the date of such casualty, Landlord shall be obligated to offer to Tenant, at the time of the commencement of such construction, the option to lease a portion of the Shopping Center (or a portion of such shopping center) equal in size to the Floor Area of the Premises at the time of the termination of this Lease, or within 10% thereof, on all the same terms and conditions of this Lease, including, without limitation, the amount of Fixed Rent per square foot of Floor Area which is not greater than (but which may be less than) the then applicable Fixed Rent per square foot set forth herein for the remaining Term of the Lease (and any unexercised Renewal Options). If Tenant shall elect, within thirty (30) days after such offer, to exercise such option, Landlord and Tenant shall promptly execute a lease on substantially the same terms and provisions of this Lease, except that all dates set forth in this Lease shall be tolled day for day for the period of time between the date that this Lease was terminated and the effective date of the new lease. If Tenant shall fail to elect, within such thirty (30)-day period, to exercise such option, Landlord shall be free to lease such premises to any other person, on any terms and provisions acceptable to Landlord. The provisions of this Section shall survive the expiration or earlier termination of this Lease and run with and bind the land comprising the Shopping Center.

11.1.2 In the event that:

(a) Landlord does not commence the repair and restoration work to the Premises, the Common Areas, or other buildings in the Shopping Center as required pursuant to this Section 11.1 within ninety (90) days after the date of such destruction (subject to extension for such additional period, not to exceed thirty (30) days in the aggregate, as may be reasonably necessary for the adjustment of insurance proceeds and the receipt of sufficient building permits) or thereafter fails to diligently pursue the completion of such repair and restoration work; or

(b) the required repairs and restorations to the Premises, the Common Areas, or other buildings in the Shopping Center are not Substantially Completed by Landlord in accordance with the provisions of this Section 11.1 within one (1) year after the date of destruction subject to extension for an event of *Force Majeure* and subject to extension for such additional period as may be reasonably necessary for the adjustment of insurance proceeds and the receipt of sufficient building permits, the foregoing extensions not to exceed thirty (30) days in the aggregate,

then, in either of such events, Tenant shall have the right, at its sole discretion and option, to:

(i) after giving thirty (30) days' prior notice to Landlord (and Landlord's continued failure to commence and diligently pursue such repairs and restoration work to completion), perform or complete, as the case may be, said work (or any portion thereof) on Landlord's behalf and at the sole cost of Landlord, which cost Landlord shall pay to Tenant during the course of such repairs within ten (10) days after Tenant's delivery to Landlord of an invoice therefor and, in default of any such payment, Tenant shall have the right to offset the amount thereof, together with interest at the Lease Interest Rate, against the Rent next accruing hereunder (it being agreed, without limiting the foregoing provisions of this Subsection 11.1.2, that at Tenant's election all insurance proceeds paid or payable to Landlord or Landlord's Mortgagee pursuant to Subsection 10.3 hereof shall be paid (or, as applicable, in turn delivered) directly to Tenant, to be applied to such work by Tenant as same is being performed); or

(ii) seek to obtain specific performance of Landlord's repair and restoration obligations pursuant to the laws of the state in which the Shopping Center is located; or

(iii) terminate this Lease by thirty (30) days' notice to Landlord.

In addition to the foregoing, if, in the opinion of an independent licensed architect designated by Tenant (and reasonably acceptable to Landlord), the required repairs and restorations to the Premises, the Common Areas or other buildings in the Shopping Center cannot be completed by Landlord in accordance with the provisions of this Section 11.1 within one (1) year after the date of destruction, Tenant shall have the right, at its sole discretion and option, to terminate this Lease by giving Landlord at least thirty (30) days' notice thereof.

11.1.3 If the Premises are substantially destroyed by fire or other casualty during the last two (2) years of the Term to the extent of more than one third (1/3) of the Floor Area thereof, Landlord or Tenant shall each have the right to terminate this Lease as of the date of such damage or destruction by giving notice within thirty (30) days following such damage or destruction, but Tenant may negate any termination by Landlord by agreeing to extend the Term for an additional five (5) year period by exercising an option pursuant to Subsection 2.2.2 hereof, if available, within ten (10) days after receipt of the termination notice from Landlord.



Section 11.2 Eminent Domain.

11.2.1 As used in this Section 11.2, "**Taking**" or "**Taken**" shall mean a taking for any public or quasi-public use by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Landlord and those having the authority to exercise such right.

11.2.2 If all of the Premises shall be Taken, this Lease shall terminate as of the date of vesting of title or transfer of possession, whichever is earlier, without further liability on the part of either Landlord or Tenant, except for an adjustment between the parties for the Rent payable by Tenant hereunder.

11.2.3 In the event that:

(a) any portion of the Premises shall be Taken so that it is commercially unreasonable or unfeasible for Tenant, in its reasonable judgment, to conduct its normal business in the Premises;

(b) as a consequence of any Taking: (i) portions of the Shopping Center shall be divided or separated in any manner that it materially interferes with parking, visibility, or access to the Premises from other portions of the Shopping Center, or (ii) the Shopping Center no longer has all of the entrances from both Ralph Hall Parkway and the I-30 Eastbound Frontage Road, and as a result, it is not commercially reasonable or feasible for Tenant, in its reasonable judgment, to conduct its normal business in the Premises;

(c) there occurs, in Tenant's reasonable judgment, a denial of adequate access to the Shopping Center at the grade of any street adjoining the Shopping Center or to any easement granted under this Lease, whether or not a Taking shall have occurred;

(d) any portion of the Shopping Center shall be Taken which materially interferes with parking, visibility or access to the Premises, and as a result of such taking it is commercially unreasonable or unfeasible for Tenant, in its reasonable judgment, to conduct its normal business in the Premises;

(e) more than twenty five (25%) percent of the total Floor Area of all of the buildings in the Shopping Center (other than the Premises) are Taken; or

(f) five (5%) percent or more of the parking spaces located in the Shopping Center are Taken, or if so many of the parking spaces in the Shopping Center are Taken such that there are fewer than (i) 4.25 parking spaces for every one thousand (1,000) square feet of Floor Area in the Shopping Center, or (ii) the number of parking spaces required by applicable Legal Requirements;

then, in any of such events, Tenant shall have the right to terminate this Lease by giving at least sixty (60) days' prior notice to Landlord within sixty (60) days of any such event, in which event this Lease shall terminate without any further liability on the part of either Landlord or Tenant, except for an adjustment between the parties for the Rent payable by Tenant hereunder and for payment to Tenant for its share of the award for the taking pursuant to Subsection 11.2.5 below. Upon any partial Taking of the Premises, the Rent shall be equitably reduced or totally abated based upon the extent to which the remaining portion of the Premises may, in Tenant's reasonable judgment, be utilized for its normal conduct of business.

11.2.4 If this Lease is not terminated pursuant to this Section 11.2 then so long as no Event of Default has occurred and is continuing, Landlord, at its sole cost and expense (which cost may be offset against the proceeds from the condemning authority), within a reasonable period of time after such Taking, shall repair and restore



1 the area not so Taken (the “**Damaged Area**”) to tenantable condition, similar in physical  
2 appearance to the condition of the area immediately prior to the Taking (to the extent  
3 practicable), pursuant to plans and specifications approved by Tenant (which repair and  
4 restoration shall, as applicable, include all Tenant’s Work and all other leasehold  
5 improvements performed by Tenant; provided, however, that Landlord shall not be  
6 obligated to repair or restore Tenant’s Property), and any and all amounts awarded to  
7 Landlord for any Taking shall be made available to and used by Landlord for any  
8 rebuilding or restoration which it is required to perform hereunder. During the period of  
9 such repairs and restoration, all Rent shall abate to the extent that the Premises may not,  
10 in Tenant’s reasonable judgment, be used by Tenant for the normal conduct of its  
11 business. Such abatement shall terminate in accordance with the terms of Section 11.3  
12 below.

13           11.2.5 In connection with any Taking or partial Taking of the Premises,  
14 Tenant shall be entitled to claim an award for loss of business, leasehold improvements,  
15 fixtures and equipment and removal and reinstallation costs; provided, however, that no  
16 award shall be payable to Tenant which reduces the award payable to Landlord for its fee  
17 interest in the Premises.

18           11.2.6 Any dispute between the parties with respect to this Section 11.2  
19 shall be resolved by arbitration in accordance with the provisions of Section 16.2 below.

20           11.2.7 If any Taking or partial Taking of the Premises shall occur during  
21 the last two (2) Lease Years of the Term of this Lease, Landlord may, if Landlord shall so  
22 elect, terminate the Lease by giving Tenant written notice of the exercise of such election  
23 within thirty (30) days after receipt by Landlord of the notice of any such Taking or  
24 partial taking, but Tenant may negate any termination by Landlord by agreeing to extend  
25 the Term for an additional five (5) year period by exercising an option pursuant to  
26 Subsection 2.2.2 hereof, if available, within ten (10) days after receipt of the termination  
27 notice from Landlord.

28           11.2.8 If this Lease is not terminated pursuant to this Section 11.2, then  
29 Tenant shall reopen for business within the Premises for at least (but not more than) one  
30 (1) day within one hundred twenty (120) days after completion of Landlord’s repair and  
31 restoration of the Damaged Area as required hereunder.

32           Section 11.3 Abatement of Rent Charges. Notwithstanding any other  
33 provisions of this Lease, if the Fixed Rent, Percentage Rent and Additional Rent payable  
34 by Tenant hereunder shall be abated pursuant to Sections 11.1 or 11.2 above, such  
35 abatement shall terminate upon the first to occur of: (a) the date on which Tenant shall  
36 reopen the Premises to the general public for business; or (b) the expiration of the period  
37 which is sixty (60) days after Landlord shall have Substantially Completed such repairs  
38 and restoration work as Landlord is obligated to perform hereunder and the interference  
39 with the operation of business in the Premises has ceased.

40                                   ARTICLE 12  
41                                   COVENANTS, REPRESENTATIONS AND WARRANTIES

42           Section 12.1 Quiet Enjoyment. Tenant shall peaceably and quietly have,  
43 hold, occupy and enjoy the Premises for the Term, without hindrance from Landlord or  
44 any party claiming by, through, or under Landlord.

45           Section 12.2 Authority. Tenant and Landlord each warrant and represent  
46 that the person(s) signing this Lease on their behalf has authority to enter into this Lease  
47 and to bind Tenant and Landlord, respectively, to the terms, covenants and conditions  
48 contained herein. The submission of this Lease to each party hereto shall be for  
49 examination and negotiation purposes only, and does not and shall not constitute a  
50 reservation of or an obligation of Tenant to lease, or otherwise create any interest of

1 Tenant in, the Premises or any other premises situated in the Shopping Center unless and  
2 until the Lease is fully executed and delivered by Tenant and Landlord.

3 Section 12.3 Landlord's Covenants, Warranties and Representations. To  
4 induce Tenant to execute this Lease, and in consideration thereof, Landlord covenants,  
5 warrants and represents to Tenant as follows:

6 (a) As of the Effective Date, Landlord has, and as of the Delivery  
7 Date Landlord shall have, good and marketable fee simple title to the entire Shopping  
8 Center, free and clear of all easements, restrictions, liens, encumbrances, leases and the  
9 like, except for the encumbrances described on Exhibit E hereto;

10 (b) In the event the legal description of the Shopping Center  
11 described in Exhibit A hereto indicates that the Shopping Center is composed of more  
12 than one parcel or lot, Landlord represents that there exist no strips or gores between such  
13 parcels or lots which are not owned by Landlord;

14 (c) No third party consents or approvals are required in order for  
15 Landlord to enter into this Lease, or for the performance of Landlord's Work and  
16 Tenant's Work (excluding, as of the Effective Date, governmental permits and  
17 approvals);

18 (d) Except as set forth on Exhibits M and K-1 hereto, Tenant's  
19 use of the Premises for sale of "Permitted Items" (defined in Section 1.1.27 above) will  
20 not violate any exclusive provision or prohibited use restriction granted to any other  
21 tenant or occupant in the Shopping Center;

22 (e) The Shopping Center will have, on the Delivery Date, access  
23 to and from Ralph Hall Parkway and the I-30 Eastbound Frontage Road, as shown on  
24 Exhibit B hereto, for the passage of vehicular traffic;

25 (f) This Lease does not violate the provisions of any instrument  
26 heretofore executed and/or binding on Landlord, or affecting or encumbering the  
27 Shopping Center, or the Premises, and no rights granted by Landlord to Tenant under the  
28 terms of this Lease conflict with any rights granted by Landlord to any other tenant or  
29 occupant in the Shopping Center;

30 (g) There shall be no restrictions or other legal impediments  
31 imposed by any public or private instrument which would prevent: (i) the use of the  
32 Premises for the Permitted Use, other than Exhibits M and K-1 hereto; (ii) the use of the  
33 parking facilities, access roads, and other Common Areas in the manner contemplated by  
34 this Lease; or (iii) the performance of Tenant's Work;

35 (h) As of the Effective Date, there are no sign ordinances,  
36 restrictive covenants, uniform sign plans or other signage restrictions which would  
37 prevent the Premises from having the signage (including, without limitation, the square  
38 foot area and size of letters) as depicted on Exhibit D-1 and Exhibit F hereof.

39 (i) As of the Effective Date there is no "Related Land" (defined  
40 in 13.1.2 below) in existence and as of the Delivery Date there will not be any Related  
41 Land in existence (or, if there shall be Related Land in existence, Landlord shall promptly  
42 notify Tenant thereof and promptly execute any recordable instrument reasonably  
43 requested by Tenant which memorializes the provisions of this Lease pertaining to or  
44 otherwise affecting Related Land);

45 (j) Attached hereto as Exhibit K-2 is a complete list of all fully  
46 executed and delivered leases in effect on the Effective Date with respect to the Shopping  
47 Center (the "*Existing Leases*"); and

(k) Landlord shall promptly forward to Tenant any notice or other communication received by Landlord from any owner of property adjoining or adjacent to the Shopping Center or from any municipal or other governmental authority, in connection with any hearing or other administrative proceeding relating to any proposed zoning, building code, signage, or related variance affecting the Shopping Center or any adjoining or adjacent property, which, if granted, could adversely affect Tenant's use or occupancy of the Premises, the conduct of Tenant's business therein, or Tenant's rights and benefits under this Lease. Landlord, at its sole cost and expense, shall appear in such proceeding and shall contest such proposed variance. If Landlord fails so to appear and contest such proposed variance after receiving five (5) days' notice from Tenant (or such shorter notice as may be practicable under the circumstances), then Tenant shall be entitled (but shall not be obligated to), in its own name and/or in the name of Landlord, to appear in such proceeding, in which event Landlord shall fully cooperate with Tenant, provide such information, and execute any documents or other instruments as Tenant may reasonably request in connection with any such proceeding.

#### Section 12.4 Environmental Matters.

##### 12.4.1 Definitions.

(a) As used herein, the term "**Environmental Laws**" shall mean any and all Legal Requirements concerning the protection of the environment, human health or safety.

(b) As used herein, the term "**Hazardous Substances**" shall mean each and every element, compound, material, mixture, substance, waste, hazardous substance, hazardous waste, hazardous material, toxic substance, pollutant or contaminant either as those terms are defined in any of the Environmental Laws or the presence of which may cause liability at common law, including, without limitation, asbestos and/or asbestos-containing products, whether or not currently friable.

(c) As used herein, the term "**Environmental Notice**" shall mean a summons, citation, directive, order, claim, notice, litigation, investigation, judgment, legal pleading, letter or other communication, written or oral, actual or threatened, from the United States Environmental Protection Agency or other federal, state or local governmental agency or authority, or any other private individual or entity concerning (i) any Hazardous Substances at, on, in, under or emanating from the Premises, the Shopping Center or any contiguous property; (ii) any violation or potential violation of Environmental Laws at the Premises, the Shopping Center or any contiguous property; or (iii) any underground storage tanks on the Premises or the Shopping Center.

(d) As used herein, the term "**Releasing**" or "**Release**" shall mean releasing, spilling, leaking, discharging, disposing or dumping or otherwise introducing any substance into the environment or into any building or other improvements in violation of Environmental Laws.

(e) As used herein, the term "**Compliance Costs**" shall mean any and all costs incurred by a party in complying with applicable Environmental Laws, including, without limitation, consultant's and engineer's fees; laboratory costs; contractor's and subcontractor's fees; application and filing fees; costs of investigation, monitoring or cleanup of soil or other substrate, surface water, groundwater, or buildings or other improvements; equipment costs; disposal fees; costs of operation and maintenance of equipment; legal fees; other governmental fees or costs; interest at the Lease Interest Rate from the date of expenditure until paid in full; and other similar or related costs.

(f) As used herein, the term "**Tenant Related Parties**" shall mean Tenant's agents, servants, employees, contractors or licensees.

1                   12.4.2    Compliance with Environmental Laws. Tenant shall comply  
2 with all applicable requirements of Environmental Laws governing its use of, and  
3 operations at, the Shopping Center and the Premises. Landlord shall comply with all  
4 applicable requirements of Environmental Laws relating to the Shopping Center and the  
5 Premises, except to the extent such requirements arise from Tenant's operations thereon.

6                   12.4.3    Responsibility for Releases of Hazardous Substances.  
7 Notwithstanding any other provision of this Lease, Tenant shall only be liable for any  
8 Release of Hazardous Substances at, on, in, under or emanating from the Premises or  
9 Shopping Center which were caused by Tenant or Tenant Related Parties (hereinafter  
10 "***Tenant Releases***"), including, without limitation, any Compliance Costs required to  
11 address Tenant Releases. Landlord shall be liable for any Hazardous Substances at, on,  
12 in, under or emanating from the Premises or Shopping Center, including, without  
13 limitation, any Compliance Costs attributable to such Hazardous Substances, unless the  
14 Hazardous Substances are caused by Tenant Releases. Except in the event of an  
15 emergency or if compelled by applicable governmental authority, any work performed by  
16 Landlord relating to Hazardous Substances shall be performed by Landlord at any time  
17 other than during the months of August, November and December, and shall be  
18 undertaken in such a manner so as to (i) not adversely affect ingress to or egress from the  
19 Shopping Center, (ii) have no adverse effect on the visibility of the Premises or any signs  
20 which contain Tenant's name, and (iii) not otherwise materially interfere with the normal  
21 conduct of any business operations in the Premises.

22                   12.4.4    Standards. Except as expressly provided herein, the parties agree  
23 that any investigation or remediation of Hazardous Substances, or cure of a violation of  
24 Environmental Laws, required to be conducted at the Premises or Shopping Center shall  
25 be no more stringent than necessary to meet the minimum standards of Environmental  
26 Laws applicable to properties used in the manner the Shopping Center is being used.

27                   12.4.5    Landlord's Representations and Warranties. Landlord represents  
28 and warrants that except as set forth in that certain Phase I Environmental Site  
29 Assessment for Rockwall Crossing by AZTEC Environmental Services dated April 2004:  
30 (i) Landlord has received no Environmental Notices concerning the Shopping Center, the  
31 Premises or any contiguous properties; (ii) Landlord has no knowledge of, and has  
32 received no notice of, any violation, or potential or alleged violation, of any Legal  
33 Requirement, including, without limitation, Environmental Laws, affecting the Shopping  
34 Center, the Premises or any contiguous properties, regardless of whether same has been  
35 cured; and (iii) to the best of Landlord's knowledge: (A) no Hazardous Substances are  
36 located at, on, in, under or emanating from the Shopping Center, the Premises or any  
37 contiguous properties; and (B) no underground storage tank exists at the Shopping Center  
38 or the Premises.

39                   12.4.6    Documents. Each party shall immediately notify the other party  
40 of the notifying party's receipt of an Environmental Notice.

41                   12.4.7    Indemnity. Each party to this Lease shall indemnify, defend and  
42 hold the other party, and its agents, servants, shareholders, directors, officers, partners,  
43 members and employees harmless from any and all claims, losses, expenses, costs,  
44 lawsuits, actions, administrative proceedings, damage, orders, judgments, penalties and  
45 liabilities of any nature whatsoever, including, without limitation, reasonable attorneys'  
46 fees (incurred to enforce this indemnity or for any other purpose) and Compliance Costs,  
47 arising from (i) the indemnifying party's breach of any of its representations, warranties,  
48 covenants or other obligations under this Section 12.4; (ii) Hazardous Substances for  
49 which the indemnifying party is liable under this Section 12.4; or (iii) violations of  
50 Environmental Laws for which the indemnifying party is liable under this Section 12.4.

51                   12.4.8    Survival. The obligations of the parties under this Section 12.4  
52 shall survive the renewal, expiration, breach or earlier termination of this Lease.

1                   12.4.9     Conflict. In the event of any conflict between the provisions of  
2 this Section 12.4 and any other provision of this Lease, the provisions of this Section 12.4  
3 shall control.

4                   Section 12.5     OEA.

5                   12.5.1     Landlord and Tenant acknowledge that Landlord shall have the  
6 right, but not the obligation, to subject the Shopping Center to the terms and conditions of  
7 one or more Declarations of Reciprocal Easements, Covenants, Conditions and  
8 Restrictions encumbering one or more of the Outparcels and the remainder of the  
9 Shopping Center (each, an "OEA"), which may be recorded after the date of execution of  
10 this Lease. Notwithstanding the later recordation of the OEA, this Lease shall be  
11 subordinate to the OEA, subject to Tenant's consent as provided herein; provided,  
12 however, in the event of a conflict between the OEA and this Lease, as between Landlord  
13 and Tenant, the terms of the Lease shall control. Within thirty (30) days after Tenant's  
14 receipt of a proposed OEA or modifications to an OEA from Landlord, Tenant shall  
15 deliver to Landlord Tenant's written notice of approval or disapproval of the OEA or  
16 proposed modifications to the OEA, which approval shall not be unreasonably withheld,  
17 conditioned or delayed so long as there is no material adverse effect on the visibility of  
18 the Premises and Tenant's signage, access to the Premises, Tenant's use or occupancy of  
19 the Premises and the operation of Tenant's business therein. If Landlord does not receive  
20 such written notice of disapproval within such thirty (30) day period, then Tenant shall be  
21 deemed to have approved the proposed OEA or modifications to the OEA. If Tenant  
22 shall deliver its written notice of disapproval to Landlord as provided herein, then  
23 Landlord and Tenant shall negotiate in good faith to resolve all objections of Tenant to  
24 the OEA or proposed modifications to the OEA. Under no circumstances shall Tenant be  
25 obligated to approve, or shall this Lease be subordinated to, any OEA or modifications to  
26 an OEA that would increase Tenant's obligations under this Lease, diminish Tenant's  
27 rights under this Lease, contradict any of the terms and conditions of this Lease, or  
28 otherwise adversely affect Tenant's use or occupancy of the Premises or the conduct of  
29 Tenant's business therein.

30                  12.5.2     Landlord shall, during the Term: (i) perform and observe all of  
31 the terms, covenants, provisions and conditions of any OEA on Landlord's part to be  
32 performed and observed; (ii) defend, indemnify and hold harmless Tenant from and  
33 against any and all claims, demands, causes of action, suits, damages, liabilities, and  
34 expenses of any nature arising out of or in connection with the enforcement of, or a  
35 claimed breach by, Landlord of any covenant, term, condition, or provision of the OEA;  
36 and (iii) diligently enforce, at its sole expense, the covenants, agreements, and obligations  
37 of the OEA.

38                  12.5.3     Whenever, pursuant to an OEA, the consent or approval of  
39 Landlord shall be required by or requested, and such consent or approval could diminish  
40 the rights or increase the obligations of Tenant thereunder or under this Lease, or could  
41 adversely affect Tenant's use or occupancy of the Premises, or the conduct of Tenant's  
42 business therein, such consent or approval shall not be granted without the prior consent  
43 of Tenant, which consent may be withheld in its sole and absolute discretion.

44                  12.5.4     Landlord shall, immediately upon receipt, forward to Tenant and  
45 Tenant's leasehold mortgagee, if any, a copy of any and all notices and/or demands  
46 received by Landlord under or pursuant to an OEA, which relate to, or could adversely  
47 affect, Tenant's use or occupancy of the Premises, the conduct of Tenant's business  
48 therein, or Tenant's rights pursuant to this Lease.

49                  12.5.5     Landlord shall not amend, or modify the OEA if such  
50 amendment or modification could materially and adversely diminish the rights or  
51 increase the obligations of Tenant thereunder or under this Lease, or could materially and  
52 adversely affect Tenant's use or occupancy of the Premises, the conduct of Tenant's

business therein, the visibility of the Premises and Tenant's signage and access to the Premises.

12.5.6 Once entered into, Landlord shall not terminate an OEA if such termination would increase Tenant's obligations under this Lease, diminish Tenant's rights under this Lease, contradict any of the terms and conditions of this Lease, or otherwise adversely affect Tenant's use or occupancy of the Premises or the conduct of Tenant's business therein.

12.5.7 In the event Landlord defaults in the performance of any of its obligations under an OEA or fails to enforce the obligations of any other obligee under an OEA, and such default or failure to enforce could adversely affect Tenant's rights thereunder or under this Lease, Tenant's Work, Tenant's use or occupancy of the Premises or the conduct of Tenant's business therein, Tenant may, but shall not be obligated to, after thirty (30) days written notice (except in the event of emergency, in which case no notice shall be required) cure any default by Landlord under the OEA and/or enforce, in its own name, at Landlord's expense, the obligations of any other obligee under the OEA. Landlord shall, upon demand, reimburse Tenant for the costs incurred by Tenant in performing any of Landlord's obligations under the OEA or enforcing the obligations of any obligee under the OEA, together with interest thereon at the Lease Interest Rate, and failing such reimbursement, Tenant shall have the right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in equity), upon ten (10) days' prior notice to Landlord, to offset such costs from the next succeeding payment or payments of any Rent due hereunder, together with interest thereon at the Lease Interest Rate from the date of outlay until reimbursement or full satisfaction by credit.

12.5.8 As between Landlord and Tenant, in the event of any conflict between an OEA and this Lease, this Lease shall in all respects control.

## ARTICLE 13 USES AND RESTRICTIONS

### Section 13.1 Permitted and Prohibited Uses.

13.1.1 Tenant's Permitted Use. The Premises may be used and occupied for the Permitted Use (defined in Subsection 1.1.27 above). Notwithstanding the foregoing, Tenant shall not use the Premises for any of the "**Prohibited Uses**" (defined in Exhibit M hereto annexed) or the "**Existing Exclusives**" (defined in Subsection 13.3.1), to the extent then applicable.

13.1.2 Prohibited Uses. Landlord shall construct, lease, operate, maintain and manage the Shopping Center as a first-class shopping center comparable to other first-class shopping centers in the state in which the Shopping Center is located. Landlord shall not lease, rent or occupy or permit any portion of the Shopping Center or any land (the "**Related Land**") contiguous or adjacent to the Shopping Center (including, without limitation, any land that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) now or hereafter owned or controlled by Landlord or its Affiliate(s), to be occupied (except to the extent otherwise permitted under any lease for space in the Shopping Center or the Related Land existing as of the Effective Date) for any of the "Prohibited Uses" (defined in Exhibit M hereto annexed), provided, however, that the foregoing provisions of this Subsection 13.1.2 shall not apply to any business existing on any Related Land owned or controlled by a person or entity which: (i) was previously, but is no longer, the Landlord hereunder, or (ii) at the time it became Landlord hereunder, already owned or controlled such Related Land (excluding, however, the Landlord originally named herein and its Affiliates).



Section 13.2 Tenant's Exclusive in Center. To induce Tenant to execute this Lease, and subject to all of the terms and provisions of this Section 13.2, Landlord covenants and agrees as follows.

13.2.1 Landlord shall not lease, rent or occupy or permit any other premises in the Shopping Center or on any Related Land to be occupied, whether by a tenant (including, without limitation, a tenant under an Existing Lease), sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items (excluding plumbing hardware); (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items (each of the aforesaid categories (a) through (f) are herein referred to as an "**Exclusive Category**" and all of the Exclusive Categories, including any and all items included within any Exclusive Categories, either singly or in any combination, are herein referred to as the "**Exclusive Items**"). Notwithstanding the foregoing, any tenant or subtenant in the Shopping Center or the Related Land shall have the right to utilize its respective premises for the sale, rental and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) five percent (5%) of the Floor Area of such tenant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet.] Existing tenants of the Shopping Center and any Related Land (and current or future assignees or sublessees of such tenants) shall nevertheless be subject to the restrictions contained in this Section 13.2 in the event that: (i) the lease between Landlord (or Landlord's Affiliate) and any such tenant requires the consent of Landlord (or its Affiliate) to any assignment or subletting or to a change in the use of the applicable premises to permit the sale, rental or distribution of the Exclusive Items; or (ii) Landlord or its Affiliate permits or agrees to an expansion of the applicable premises for the sale, rental, or distribution of the Exclusive Items. The restrictions set forth in this Section 13.2 shall terminate with respect to any particular Exclusive Category in the event Tenant, after the initial opening of the Premises to the public for business (or, if earlier, the date which is one (1) year after the date upon which the Premises was required to be so open under this Lease), has ceased to sell, rent or distribute such Exclusive Category at the Premises for a continuous period of one (1) year (other than during Excused Periods); *provided, however*, that such restrictions with respect to such Exclusive Category shall not be null and void unless (x) Landlord has notified Tenant that Landlord intends to terminate such restrictions by notice delivered to Tenant at any time after the end of such latter one (1) year period (which notice shall set forth which particular Exclusive Category such restrictions are intended by Landlord to be terminated with respect to), and (y) Tenant fails to sell, rent or distribute such Exclusive Category within one hundred eighty (180) days following the delivery of such notice to Tenant. Landlord represents that the Existing Leases contain provisions subjecting the tenants thereunder to the foregoing provisions of this Section 13.2.1.

13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to (i) a full-line national or regional department store [for example, Wal-Mart, J.C. Penny, Macy's, or Target], discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or home improvement center [for example, Home Depot or Lowe's], each of the type commonly located in first-class shopping centers in the state in which the Shopping Center is located and each occupying at least 80,000 square feet of Floor Area within the Shopping Center (or such lesser square footage as these retailers may then be operating on a national or regional basis so long as such retailers are not then primarily selling home furnishings or any of the Exclusive Categories), (ii) a Kohl's store



1 occupying at least 60,000 square feet of Floor Area or a Belks store occupying at least  
2 50,000 square feet of Floor Area, so long as each such store is not then primarily selling  
3 home furnishings or any of the Exclusive Items, (iii) Bombay Furniture/Bombay Kids, so  
4 long as at the time Bombay Furniture/Bombay Kids' is primarily a furniture store selling  
5 so-called "private label" products, is occupying less than 10,000 square feet of Floor  
6 Area and has entered into a Coexistence Agreement (as defined herein) with Tenant, (iv)  
7 Bath & Body Works, so long as at the time Bath & Body Works is primarily a personal  
8 care products store selling so-called "private label" products, is occupying less than 5,000  
9 square feet of Floor Area and has entered into a Coexistence Agreement with Tenant, (v)  
10 Hobby Lobby, so long as such retailer is not then primarily selling home furnishings or  
11 any of the Exclusive Items and has entered into a Coexistence Agreement with Tenant,  
12 (vi) Dollar Tree, so long as such retailer is not then primarily selling home furnishings or  
13 any of the Exclusive Items, is operated substantially as it is on the Effective Date and has  
14 entered into a Coexistence Agreement with Tenant, and (vii) a full-line furniture store so  
15 long as at the time such store is operated primarily for the sale of so-called "hard-line"  
16 furniture and so long as such store is not then primarily selling any of the Exclusive  
17 Items. In addition, the restrictions set forth in Subsection 13.2.1 above shall not apply to  
18 any of the following retailers if Landlord enters into a lease with any such retailer within  
19 eighteen (18) months after the Effective Date and so long as such retailer has entered into  
20 a Coexistence Agreement with Tenant: (i) Jo-Ann Fabrics or Michaels Arts and Crafts,  
21 (ii) Ross Dress for Less, (iii) Pier I Imports, (iv) Cost Plus/Cost Plus World Market, (v)  
22 T.J. Maxx or Marshalls (provided the store occupied by T.J. Maxx or Marshalls does not  
23 exceed 33,000 square feet of Floor Area and provided such store is not a Mega Marshalls,  
24 T.J. Maxx 'n More or Home Goods store), (vi) Circuit City or Best Buy, and (vii)  
25 Steinmart. As used herein "**Coexistence Agreement**" shall mean a separate agreement  
26 between Tenant and a third party retailer in which Tenant and/or the third party retailer  
27 (in such context, the "**Restricting Party**") agrees to allow the other party (in such context,  
28 the "**Restricted Party**") to sell, rent or distribute certain items within the Shopping Center  
29 notwithstanding any lease exclusives or restrictive covenants the Restricting Party may  
30 have the benefit of enforcing at the Shopping Center; *provided* that under no  
31 circumstances shall Tenant have any obligation to enter into any Coexistence Agreement  
32 with any party except in a form substantially similar to that which Tenant is then entering  
33 into with retailers of the same type.

34 13.2.3 The exclusive rights granted to Tenant in this Section 13.2 shall  
35 inure to the benefit of any assignee of Tenant's interest in this Lease and to any sublessee  
36 of at least fifty percent (50%) of the Floor Area of the Premises.

37 13.2.4

38 (a) Upon breach of the aforesaid covenant and agreement by  
39 Landlord (which breach shall not include a situation in which the lease between Landlord  
40 and any tenant in the Shopping Center or in the Related Land prohibits the tenant therein  
41 from violating the exclusive rights granted to Tenant in this Section 13.2 and despite such  
42 prohibition, such tenant violates such exclusive rights, unless Landlord fails to comply  
43 with any of the provisions of subparagraph (b) below), the Fixed Rent payable hereunder  
44 shall be reduced by fifty percent (50%) for so long as such violation shall continue, and  
45 Tenant shall have all remedies given to it at law and in equity, including, without  
46 limitation, the right to obtain injunctive relief, and/or to terminate this Lease, and/or to  
47 commence and prosecute an action against Landlord or any other violator for damages.

48 (b) If any person or entity other than Landlord shall violate any  
49 of the exclusive provisions herein set forth, or shall indicate in writing to Landlord that it  
50 intends to violate any of said provisions, Landlord shall promptly commence appropriate  
51 legal proceedings, and vigorously prosecute the same, to enjoin and prohibit any such  
52 violation. If Landlord fails to promptly commence such proceedings, or shall fail  
53 thereafter to vigorously prosecute the same, then Tenant shall have the right (a) to  
54 conduct and prosecute such legal proceedings (including, without limitation, an action for

injunctive relief) in its own name, at Landlord's expense, or (b) in the event the right set forth in (a) above is not permitted to be exercised under applicable Legal Requirements, to conduct and prosecute such legal proceedings in the name of Landlord, at Landlord's expense, and Landlord shall cooperate with Tenant with respect to such prosecution (including, without limitation, by executing any documentation or authorization reasonably required by Tenant in connection with such prosecution and by appearing at any hearing or trial with respect to such prosecution).

### Section 13.3 Exclusives Which Tenant Must Honor.

13.3.1 Tenant shall honor certain exclusives and use restrictions (hereinafter, collectively, "***Existing Exclusives***") granted by Landlord to certain other tenants in the Shopping Center pursuant to the terms of certain Existing Leases, or in the case of the TJ Maxx provisions set forth in Exhibit K-1 pursuant to a lease which shall have been executed within one (1) year following the Effective Date so long as Landlord was engaging in good faith negotiations therefor at the time of the Effective Date and so long as the tenant thereunder shall have entered into a Coexistence Agreement with Tenant, a true and complete listing and description of such Existing Exclusives being attached hereto as Exhibit K-1, and shall not sublease, occupy or use all or any portion of the Premises, or permit all or any portion of the Premises to be occupied or used in violation of any such Existing Exclusive (except as may be specifically set forth on Exhibit K-1). Landlord represents and warrants that no Existing Exclusive(s) exist other than those listed on Exhibit K-1 hereto and that Exhibit K-1 is true accurate and complete, and covenants to indemnify, defend and hold Tenant harmless from and against all loss, cost, liability or expense (including, without limitation, reasonable legal fees) incurred by Tenant by reason of the enforcement by any person or entity of such unlisted Existing Exclusive. Landlord shall not have the right to enforce the terms of the preceding provisions of this Section 13.3.1 with respect to any third party retailer with whom Tenant has executed a Coexistence Agreement. Tenant shall indemnify, defend and hold Landlord harmless from all loss, cost and/or expense incurred by Landlord as a result of any alleged breach by Tenant of any Coexistence Agreement.

### 13.3.2 [Intentionally Omitted]

13.3.3 Except as expressly set forth in this Section 13.3, Tenant shall not be obligated to honor any exclusive granted by Landlord to any tenant in the Shopping Center.

## ARTICLE 14 CONDUCT OF BUSINESS OPERATIONS

Subject to the other provisions of this Lease (including, without limitation, Articles 2 & 3 hereof) Tenant shall initially open its store for business to the public in the Premises for at least one (1) day as a typical "Bed Bath & Beyond", not later than the ninetieth (90th) day after the Rent Commencement Date (which date shall, as applicable, be extended by reason of (A) damage or destruction, eminent domain proceedings or actions, or *Force Majeure*, or (B) the acts or omissions of Landlord). Other than as expressly set forth in the preceding sentence, Tenant shall have no obligation to open or operate any business in the Premises, and shall have the right, at any time, to cease to conduct any business operations in the Premises, and Tenant shall incur no liability to Landlord or its Mortgagee by reason thereof (it being understood and agreed that all of Tenant's obligations under this Lease shall continue unless this Lease is terminated pursuant, *inter alia*, to the further provisions of this Article 14 or any other provision of this Lease [other than by reason of an Event of Default]). In the event that Tenant does not operate or cause to be operated any retail business in the Premises (other than prior to the Delivery Date or during Excused Periods) for more than three hundred sixty-five (365) consecutive days (a "***Non-operating Condition***"), then so long thereafter as such Non-operating Condition is continuing uninterruptedly Landlord may notify Tenant of its

intention to terminate this Lease. Within fifteen (15) days of Tenant's receipt of Landlord's termination intention notice, Tenant shall deliver to Landlord a statement certified by Tenant of the amount of Tenant's costs and expenses incurred in connection the preparation of plans and specifications for, and the then unamortized costs (amortized on a straight-line basis over the Initial Term) of, Tenant's Work and any alterations performed by Tenant to the Premises (collectively, "**Recapture Costs**"). Within fifteen (15) days after Landlord's receipt of such statement, Landlord may then elect by notice to Tenant to terminate this Lease provided that such notice shall contain payment in full of the Recapture Costs identified in Tenant's statement, whereupon this Lease shall terminate upon the thirtieth (30th) day (the "**Recapture Date**") after the date on which Tenant receives Landlord's termination notice, as if the Recapture Date was originally set forth herein as the expiration date of the Term. Upon such termination, Landlord and Tenant shall each be released from any and all liabilities thereafter accruing hereunder, except for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease. All Rent payable by Tenant hereunder shall be apportioned as of the Recapture Date and Tenant shall promptly pay to Landlord any amounts so determined to be due and owing by Tenant to Landlord, and conversely Landlord shall promptly reimburse Tenant for any amounts prepaid by Tenant for periods subsequent to the Recapture Date. Notwithstanding anything to the contrary contained herein, in the event Tenant, after initially opening as provided herein, shall cease operating for business in the Premises for a period of thirty (30) consecutive days (other than during Excused Periods) and a business does not reopen in the Premises within ten (10) days after written notice from Landlord to Tenant stating in ALL CAPITAL LETTERS or **bold type** that failure of a business to reopen in the Premises will result in the applicability of this sentence of Article 14), then during the period commencing on the expiration of the aforesaid 10-day period and ending on the Recapture Date that would have applied had Landlord exercised its termination rights under this Article 14 at the earliest juncture allowed hereunder (the "**Applicable Period**") the Fixed Rent set forth herein shall be deemed increased to include the Percentage Rent, if any, as had been payable by Tenant for the immediately preceding three hundred sixty-five (365) day period, pro rated on a per diem basis for the Applicable Period. Notwithstanding the foregoing, Landlord shall not be obligated to provide written notice of Tenant's failure to operate in the Premises for such 30-day period (plus Excused Periods) more than one time each calendar year, and, in such event, the Applicable Period shall commence on the thirty-first (31<sup>st</sup>) day after a business ceases to be open in the Premises.

## ARTICLE 15 TENANT ASSIGNMENT AND SUBLETTING

### Section 15.1 Assignment and Subletting.

15.1.1 Provided any Event of Default has not occurred and is continuing, Tenant shall have the right from time to time, without the consent of Landlord, to assign Tenant's interest in this Lease and/or to sublet, concession or license all or any portion of the Premises, subject to (a) all of the terms and conditions of this Lease (including, without limitation, Article 13 hereof), (b) the Existing Exclusives, and (c) the Permitted Encumbrances set forth on Exhibit E hereto. Tenant agrees to provide Landlord with written notice of any such assignment or subletting within thirty (30) days following the effective date of same, subject to the provisions of Subsection 15.1.2 below.

15.1.2 Except with respect to any transaction covered under Subsection 15.1.3 or Section 15.3 below, in the event Tenant proposes to assign this Lease or sublet, in a single transaction, the whole of the Premises, it shall first give notice thereof (the "**Assignment/Subletting Notice**") to Landlord, which notice shall specify the name and address of the proposed assignee or sublessee, along with such financial information as Landlord may reasonably require and the proposed use of the Premises to be made by such assignee or sublessee, together with a statement certified by Tenant of the amount of

the then Recapture Costs applicable thereto. Thereafter, Landlord shall have the option to terminate this Lease, which option shall be exercisable by:

(a) giving notice to Tenant (the "**Termination Notice**") thereof within fifteen (15) business days after receipt of an Assignment/Subletting Notice from Tenant, and

(b) paying to Tenant, within thirty (30) days after such notice is given, all of the Recapture Costs identified in Tenant's statement,

in which event this Lease shall automatically terminate on the ninetieth (90th) day (the "**Termination Date**") after the date on which Tenant receives Landlord's Termination Notice, with the same force and effect as if the Termination Date had been designated as the expiration date of this Lease. Upon the Termination Date, Landlord and Tenant shall each be released from any and all liabilities thereafter accruing hereunder, except for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease. All Rent payable by Tenant hereunder shall be apportioned as of the Termination Date and Tenant shall promptly pay to Landlord any amounts so determined to be due and owing by Tenant to Landlord, and conversely Landlord shall promptly reimburse Tenant for any amounts prepaid by Tenant for periods subsequent to the Termination Date. Notwithstanding the foregoing, Tenant shall have the right to avoid Landlord's termination by giving notice to Landlord (the "**Rescission Notice**"), within ten (10) days after receiving the Termination Notice, of its rescission of the Assignment/Subletting Notice, whereupon Landlord's Termination Notice shall be rendered null and void, and Tenant shall not assign this Lease or sublet the whole of the Premises as proposed in its Assignment/Subletting Notice. If Landlord does not give the Termination Notice within the aforesaid 15 business day period, Landlord shall conclusively be deemed to have waived its termination rights hereunder with respect to such proposed assignment or subletting transaction, and Tenant may assign this Lease or sublet the entire Premises in accordance with its Assignment/Subletting Notice.

15.1.3 In addition to, and not in limitation of, Tenant's other rights set forth in this Section 15.1, Tenant shall have the right from time to time, without the consent of Landlord, to assign Tenant's interest in this Lease and/or to sublet or license all or any portion of the Premises: (a) to an Affiliate of Tenant; (b) to any entity which purchases all or substantially all of the assets of Tenant or any of its Affiliates; (c) to any entity which purchases Tenant's interest in the majority of stores owned or operated by Tenant or its Affiliate(s) in the Dallas/Fort Worth, Texas metropolitan area; (d) in conjunction with any merger, acquisition, consolidation or public offering of stock or other interests involving Tenant or its Affiliate(s); and/or (e) as may be required by any Legal Requirement.

Section 15.2 Liability of Tenant. Unless otherwise agreed to in writing by Landlord, no assignment, subletting, licensing or concessioning by Tenant shall reduce, diminish, or otherwise affect the liability of Tenant hereunder.

Section 15.3 Collateral Assignment. In addition to Tenant's other rights set forth in this Article 15, a mortgage, deed of trust or collateral assignment of Tenant's interest in this Lease by Tenant to one or more "Lenders" (hereinafter defined), as collateral security for an indebtedness or other obligation of Tenant or its Affiliates shall be permitted and Landlord shall execute all documentation reasonably requested by Tenant or any such Lender in connection therewith. In addition, Tenant shall have the right, without Landlord's consent, to grant to an Affiliate of Tenant a license to operate all of Tenant's business operations at the Premises, without such Affiliate having assumed any liability for the performance of Tenant's obligations under this Lease. As used herein, "**Lender**" shall mean a state or federally regulated: bank, savings and loan association, insurance company, pension fund, credit union, real estate investment trust, or other institutional lender.

Section 15.4 Cure Rights of Original Tenant.

15.4.1 If Tenant assigns Tenant's interest in this Lease, then Landlord, when giving notice to said assignee or any future assignee in respect of any default, shall also give a copy of such notice to the Tenant originally named in this Lease (the "**Original Tenant**"), and no notice of default shall be effective until a copy thereof is so given to Original Tenant. Original Tenant shall have the same period after receipt of such notice to cure such default as is given to Tenant therefor under this Lease.

15.4.2 If this Lease is terminated because of: (a) an Event of Default of such assignee, or (b) the rejection, disaffirmation, or other termination of this Lease by or on behalf of the assignee pursuant to any proceeding in bankruptcy under any Legal Requirement of any State or of the United States, or any other Legal Requirements affecting creditors' rights, then Landlord shall promptly give to Original Tenant notice thereof, and Original Tenant shall have the right, exercisable by notice given to Landlord within fifteen (15) days after receipt by Original Tenant of Landlord's notice, to enter into a new lease of the Premises with Landlord ("**New Lease**"), provided that the Original Tenant shall have remedied all Events of Default of the assignee hereunder, unless such Events of Default are not reasonably susceptible of cure by the Original Tenant, in which event the Original Tenant shall not be obligated to cure such Events of Default as a condition to the exercise of its rights under this Subsection 15.4.2 but shall be thereafter obligated to remedy the same to the extent required under the terms of the New Lease. Upon the Original Tenant's curing of any such Event of Default of the assignee as aforesaid, Landlord shall assign to the Original Tenant all of Landlord's rights against such assignee (whether arising as a result of bankruptcy court proceedings or otherwise). The term of said New Lease shall begin on the date of termination of this Lease and shall continue for the remainder of the Term (including any Renewal Periods). Such New Lease shall otherwise contain the same terms and conditions as those set forth herein, except for requirements which are no longer applicable or have already been performed. It is the intention of the parties hereto that such New Lease shall have the same priority relative to other rights or interests in or to the Premises as this Lease. The provisions of this Subsection 15.4.2 shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Subsection 15.4.2 were a separate and independent contract between Landlord and the Original Tenant. From the date on which the Original Tenant shall serve Landlord with the aforesaid notice of the exercise of its right to a New Lease, the Original Tenant shall have quiet and undisturbed use and enjoyment of the Premises and all appurtenances thereto, as contemplated in this Lease.

Section 15.5 Recognition Agreement. In the event Tenant subleases at least fifty percent (50%) of the Floor Area of the Premises for a term of at least five (5) years (or such lesser time as may then remain in the then current Term hereof) to any Recognized Tenant having a then net worth of at least fifteen million (\$15,000,000) dollars determined in accordance with GAAP, then, notwithstanding any other provisions of this Lease, and so long as (x) such sublet premises contain approximately the same consistent depth as that applicable to the Premises generally, subject, however, to such subtenant's reasonable loading, storage, ingress/egress and corridor requirements, (y) the then balance of the Premises (i.e. the space not being so subleased) is not rendered unmarketable by reason of such sublease, utilizing commercially reasonable standards, and (z) the term of such sublease (as the same may be renewed) does not extend beyond the duration of the Term (including the Renewal Periods), Landlord shall, upon Tenant's request, execute and deliver an agreement among Landlord, Tenant and such subtenant substantially in the form of Exhibit H hereto, in recordable form.

ARTICLE 16  
DEFAULT AND DISPUTE RESOLUTION

Section 16.1 Tenant Default.

1           16.1.1     If Tenant shall fail to: (i) pay any Rent when due, within ten (10)  
2 days after its receipt of notice thereof from Landlord specifying the amount and details of  
3 the unpaid Rent, or (ii) perform or observe any of the other covenants of this Lease on  
4 Tenant's part to be performed or observed within thirty (30) days after its receipt of  
5 notice thereof from Landlord specifying the nature of such default (or, if such default  
6 shall be of a nature that same cannot reasonably be cured within thirty (30) days and  
7 Tenant does not commence to cure such default on or before such thirtieth (30th) day and  
8 thereafter diligently prosecute said cure to completion), such circumstance shall  
9 constitute an ***"Event of Default"***.

10           16.1.2     Upon an Event of Default, Landlord shall have all remedies  
11 given to it at law or in equity (except that Landlord hereby expressly waives any rights to  
12 accelerate any element of the Rent, and any right of distraint, which may be granted to it  
13 by law), including the following:

14                   (a)     to bring suit for the collection of such unpaid Rent or for the  
15 performance of such other covenant of this Lease on Tenant's part to be performed;  
16 and/or

17                   (b)     without waiving any non-monetary default, may (but shall not  
18 be obligated to) perform any covenant which is capable of being remedied by the  
19 performance of affirmative acts for the account and at the reasonable expense of Tenant  
20 (it being agreed that should Landlord require access to the Premises in order to perform  
21 such covenant as aforesaid, Landlord shall comply with the applicable provisions of  
22 Sections 9.2 hereof), in which event, Tenant shall pay to Landlord on demand, as  
23 Additional Rent, the reasonable cost or amount thereof, together with interest thereon at  
24 the Lease Interest Rate from the date of outlay of expense until payment; and/or

25                   (c)     upon at least five (5) days' notice to Tenant, to terminate this  
26 Lease, whereupon Landlord shall have and retain full right to sue for and collect all  
27 unpaid Rent which shall have accrued up to the date of termination and any damages to  
28 Landlord by reason of any such breach, and Tenant shall surrender and deliver the  
29 Premises to Landlord, failing which, Landlord shall have the right to initiate summary  
30 proceedings to recover possession; and/or

31                   (d)     upon at least five (5) days' notice to Tenant to terminate  
32 Tenant's right of possession, re-enter the Premises and take possession thereof by lawful  
33 means. If Landlord shall so elect to repossess the Premises without terminating the  
34 Lease, then Tenant shall be liable for and shall pay to Landlord all Rent payable to  
35 Landlord pursuant to the terms of this Lease which shall have accrued up to the date of  
36 repossession, as well as all Rent as and when same shall become due and payable  
37 pursuant to the terms of this Lease during the remainder of the Term, diminished by any  
38 net sums thereafter received by Landlord through reletting the Premises during said  
39 period (after deducting reasonable costs and expenses incurred by Landlord in connection  
40 with such reletting). In no event shall Tenant be entitled to any excess of any rent  
41 obtained by such reletting over and above the Rent herein reserved. Landlord may bring  
42 actions to collect amounts due by Tenant under this Lease, from time to time, prior to the  
43 expiration of the Term.

44           16.1.3     Upon an Event of Default, Tenant shall be liable for and shall  
45 pay to Landlord, in addition to any sum provided to be paid above, brokers' fees incurred  
46 by Landlord in connection with reletting the whole or any part of the Premises for the  
47 remainder of the then unexpired Term (excluding any then unexercised Renewal  
48 Periods), the costs of removing and storing Tenant's or other occupant's property; the  
49 cost of repairs; and all other commercially reasonable expenses incurred by Landlord in  
50 enforcing or defending Landlord's rights and/or remedies, including reasonable  
51 attorneys' fees.



1           16.1.4    Upon an Event of Default, any amounts paid by Landlord to cure  
2 said Event of Default and any Rent payments not paid after notice thereof is given shall  
3 bear interest at the Lease Interest Rate from and after the expiration of any applicable  
4 grace period until paid.

5           16.1.5    Landlord shall use all reasonable efforts to relet the Premises or  
6 any portion thereof to mitigate Landlord's damages to which Landlord would otherwise  
7 be entitled to as a result of an Event of Default, provided, however, Landlord shall not be  
8 obligated to attempt to relet the Premises prior to leasing other available and comparable  
9 space in the Shopping Center. In no event shall Tenant be liable to Landlord for any  
10 consequential damages suffered by Landlord as a result of an Event of Default by, or any  
11 other act of, Tenant.

12           16.1.6    Landlord Default. If Landlord shall: (i) fail to perform or  
13 observe any of the covenants of this Lease on Landlord's part to be performed or  
14 observed within thirty (30) days after receiving notice from Tenant thereof (or, if same  
15 cannot reasonably be cured within thirty (30) days, if Landlord shall fail to promptly  
16 commence and diligently prosecute said cure to completion), or (ii) materially breach any  
17 warranty or representation under this Lease (either of (i) or (ii) above being hereinafter  
18 referred to as a "**Landlord's Default**"), then Tenant, in addition to such other rights and  
19 remedies as may be available under this Lease, or at law or in equity, may, in its sole  
20 discretion:

21                   (a)    as applicable, perform such obligation(s) of Landlord in  
22 accordance with the provisions of this Lease on behalf of, and at the expense of Landlord  
23 if such default by Landlord shall materially and adversely affect Tenant's use and  
24 operation of the Premises or the Common Areas as set forth herein; and/or

25                   (b)    bring suit for the collection of any amounts for which  
26 Landlord is in default, seek injunctive relief, or seek specific performance for any other  
27 covenant or agreement of Landlord, without terminating this Lease; and/or

28                   (c)    offset up to fifty percent (50%) of each successive installment  
29 of Fixed Rent payable by Tenant hereunder for amounts owed by Landlord to Tenant  
30 and/or for the amounts reasonably expended by Tenant performing Landlord's  
31 obligations hereunder, including costs and reasonable attorneys' fees, together with  
32 interest thereon at the Lease Interest Rate from the date of the outlay until paid (it being  
33 agreed that (x) Tenant shall, as applicable, be entitled to offset against larger percentages  
34 of each successive installment of Fixed Rent if the aforesaid fifty (50%) percent offset is  
35 insufficient to reimburse Tenant in full, taking into account the then remaining number of  
36 installments of Fixed Rent due and payable by Tenant hereunder, and (y) the reference in  
37 this subsection (c) to fifty (50%) percent shall be increased to one hundred (100%)  
38 percent with respect to offsets pertaining to Tenant's performance of Landlord's Work,  
39 Tenant's performance of the Primary Restoration and/or the Secondary Restoration  
40 pursuant to Section 11.1 hereof (subject, as applicable, to Tenant's actual receipt of  
41 insurance proceeds which would otherwise be payable to Landlord or Landlord's  
42 Mortgagee, in the manner described in said Section 11.1), and Tenant's performance of  
43 restoration work pursuant to Section 11.1 hereof); and/or

44                   (d)    may terminate this Lease, without waiving its rights to  
45 damages for Landlord's Default, provided that: (1) Landlord's Default materially  
46 interferes with the normal conduct of any business operations in the Premises, (2)  
47 Landlord's Default is not reasonably capable of being cured by Tenant, and (3) Tenant  
48 gives notice of Landlord's Default to any Mortgagee of whom Landlord shall have  
49 previously given Tenant notice (including its address), and such Mortgagee shall not have  
50 cured Landlord's Default within thirty (30) days after such notice is given (or, if such  
51 default cannot reasonably be cured within thirty (30) days, such Mortgagee fails to  
52 promptly commence and diligently prosecute said cure to completion).



1 Notwithstanding the foregoing, if, in Tenant's reasonable judgment, a condition  
2 posing imminent risk of liability or material harm to persons or property or material  
3 disruption to the normal conduct of any business operations in the Premises shall exist,  
4 Tenant may, at its election, and without prior notice to Landlord, exercise any or all of  
5 the remedies set forth in (a), (b) and (c) above. In no event shall Landlord be liable to  
6 Tenant for any consequential damages suffered by Tenant as a result of a default by, or  
7 any other act of, Landlord.

8 Section 16.2 Arbitration. In any case where this Lease expressly provides  
9 for submission of a dispute or matter to arbitration (but not otherwise), the same shall be  
10 settled by arbitration in Dallas, Texas, before one arbitrator in accordance with the  
11 procedural rules then obtaining of the American Arbitration Association or any successor  
12 thereto. The decision of the arbitrator shall be final, conclusive and binding on the  
13 parties, but the powers of the arbitrator are hereby expressly limited to the determination  
14 of factual issues, and the arbitrator shall have no power to reform, supplement or modify  
15 this Lease. The arbitrator shall make only required findings of fact incident to an  
16 arbitrable dispute, which findings shall be set forth in reasonable detail in a written  
17 decision by the arbitrator. Landlord and Tenant shall share equally in the cost and  
18 expenses of such arbitration, and each shall separately pay its own attorneys' fees and  
19 expenses, unless the arbitrator finds that one of the parties did not act in good faith in  
20 connection with the dispute or the conduct of the arbitration proceeding, in which case  
21 the arbitrator may award all or part of said costs, expenses and fees to the other party.

## 22 ARTICLE 17

### 23 RIGHT TO MORTGAGE AND NON-DISTURBANCE; ESTOPPEL CERTIFICATE

24 Section 17.1 Right to Mortgage and Non-Disturbance. Landlord reserves  
25 the right to subject and subordinate this Lease at all times to any first mortgage or deed of  
26 trust for the benefit of any Mortgagee hereafter encumbering or affecting all or any  
27 portion of the Shopping Center, as well as to any future ground or underlying leases  
28 encumbering or affecting all or any part of the Shopping Center; provided, however, that  
29 (a) each Mortgagee shall first execute and deliver to Tenant a subordination, non-  
30 disturbance and attornment agreement in substantially the form attached as Exhibit G  
31 hereto (or in another form acceptable to Tenant, acting reasonably and in good faith, so  
32 long as such agreement shall include the following provisions: (i) no default by Landlord  
33 under its mortgage or deed of trust shall affect Tenant's rights under this Lease so long as  
34 no Event of Default has occurred and is continuing; (ii) Tenant will not be named a party  
35 in any foreclosure or other proceedings with respect to such mortgage or deed of trust,  
36 unless required by applicable Legal Requirements; and (iii) such Mortgagee agrees that  
37 the insurance proceeds resulting from any fire or other casualty and the proceeds payable  
38 from any Taking will be made available for restoration of the Premises and the Shopping  
39 Center to the extent required in Article 11 of this Lease), in recordable form, and (b) any  
40 Ground Lessor shall execute (and shall obtain the written consent of any holder of any  
41 mortgage, deed of trust or any other existing lien encumbering or affecting the Shopping  
42 Center or any portion thereof, as applicable) and deliver to Tenant a fee owner  
43 recognition agreement in a form reasonably satisfactory to Tenant, which shall include  
44 the following provisions: (i) the Ground Lessor will not, in the exercise of any of the  
45 rights arising or which may arise out of such lease, disturb or deprive Tenant in or of its  
46 possession or its rights to possession of the Premises or of any right or privilege granted  
47 to or inuring to the benefit of Tenant under this Lease; (ii) in the event of the termination  
48 of the ground or underlying lease, Tenant will not be made a party in any removal or  
49 eviction action or proceeding, nor shall Tenant be evicted or removed of its possession or  
50 its right of possession of the Premises, and this Lease shall continue in full force and  
51 effect as a direct lease between the Ground Lessor and Tenant for the remainder of the  
52 Term and on the same terms and conditions as contained herein, without the necessity of  
53 executing a new lease; and (iii) Landlord and Tenant shall have the right to execute any  
54 amendment to this Lease which is specifically required hereunder and the Ground Lessor  
55 shall recognize and be bound thereto.

1           Section 17.2     Estoppel Certificate. Upon written request of Landlord or  
2 Tenant, the other party, within twenty (20) days of the date of such request, shall execute  
3 and deliver to and only for the benefit of the requesting party or any Mortgagee, *bona*  
4 *fide* prospective purchaser, assignee, or sublessee of the requesting party, without charge,  
5 a written statement: (1) ratifying this Lease; (2) certifying, to such party's actual  
6 knowledge, that this Lease is in full force and effect, if such is the case, and has not been  
7 modified, assigned, supplemented or amended, except by such writings as shall be stated;  
8 (3) specifying the dates to which Fixed Rent and Additional Rent have been paid; (4)  
9 stating whether or not, to such party's actual knowledge, the party requesting the estoppel  
10 is in default and, if so, stating the nature of such default, (5) stating the Rent  
11 Commencement Date, (6) stating which options to extend the Lease Term have been  
12 exercised, if any, and (7) stating any other factual matter reasonably requested hereunder.

13           Section 17.3     Existing Mortgages. If a mortgage, deed of trust, or other  
14 security instrument encumbers the Shopping Center or any part thereof on the Effective  
15 Date, then within thirty (30) days after the Effective Date, Landlord shall deliver to  
16 Tenant, in recordable form: (x) a subordination, non-disturbance and attornment  
17 agreement substantially in the form attached hereto as Exhibit G, (or in another form  
18 acceptable to Tenant, acting reasonably and in good faith, so long as such agreement shall  
19 include the following provisions: (i) no default by Landlord under its mortgage or deed of  
20 trust shall affect Tenant's rights under this Lease so long as no Event of Default has  
21 occurred and is continuing; (ii) Tenant will not be named a party in any foreclosure or  
22 other proceedings with respect to such mortgage or deed of trust, unless required by  
23 applicable Legal Requirements; and (iii) such Mortgagee agrees that the insurance  
24 proceeds resulting from any fire or other casualty and the proceeds payable from any  
25 Taking will be made available for restoration of the Premises and the Shopping Center to  
26 the extent required in Article 11 of this Lease), in recordable form, executed by each and  
27 every holder of any mortgage, deed of trust or any other existing lien encumbering or  
28 affecting the Shopping Center or any portion thereof, and (y) a fee owner recognition  
29 agreement in the form and content described in clause (b) of Section 17.1 hereof, in  
30 recordable form, executed by any Ground Lessor (and, as may be required, consented to  
31 by the holder of any mortgage, deed of trust or other existing lien as aforesaid). Should  
32 Landlord fail to so deliver such instrument(s) within said 30-day period, Tenant shall  
33 have the right by notice given to Landlord at any time prior to the date on which such  
34 instrument(s) are delivered, to terminate this Lease, in which event, neither party shall  
35 have any further liability hereunder, except: (i) for those obligations which survive the  
36 expiration or other termination of this Lease pursuant to the express terms of this Lease,  
37 and (ii) Landlord shall be obligated to promptly reimburse Tenant for all its reasonable,  
38 third-party costs and expenses incurred in connection with this Lease, including, without  
39 limitation, the preparation and review of plans and specifications, and the performance of  
40 Tenant's Work, provided, however, that such reimbursement by Landlord shall not  
41 exceed the aggregate sum of Fifty Thousand Dollars (\$50,000), in the aggregate.

42                           ARTICLE 18  
43                           NOTICE

44           Subject to the further provisions of this Article 18, whenever it is provided herein  
45 that any notice, demand, request, consent, approval or other communication ("**Notice**")  
46 shall or may be given to either of the parties by the other, it shall be in writing and, any  
47 Legal Requirement to the contrary notwithstanding, shall not be effective for any purpose  
48 unless same shall be given by registered or certified mail, postage prepaid, return receipt  
49 requested, or by any recognized overnight mail carrier, with proof of delivery slip,  
50 addressed to Landlord at Landlord's Mailing Address or to Tenant at Tenant's Mailing  
51 Address, with copies of notices to Tenant also given to: (i) Allan N. Rauch, Esq., c/o Bed  
52 Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and (ii) Thomas J.  
53 Phillips, Esq., c/o Brown Rudnick Berlack Israels LLP, One Financial Center, Boston,  
54 Massachusetts 02111, or to such other person or other address as may, from time to time,  
55 be specified by either party in a written notice to the other party. All notices given in

1 accordance with the provisions of this Section shall be effective upon receipt (or refusal  
2 of receipt) at the address of the addressee. Notwithstanding the foregoing, Landlord shall  
3 instead send the following items to Tenant (Attention: Lease Administration) at Tenant's  
4 Mailing Address: (A) all bills, notices (but not notices of default) and related information  
5 pertaining to Tenant's Pro Rata Share of Taxes as described in Section 4.3 of this Lease,  
6 and (B) all budgetary information, notices (but not notices of default), statements, bills  
7 and related information pertaining to Tenant's Pro Rata Share of Common Areas Charges  
8 as described in Section 5.1 of this Lease.

9 ARTICLE 19  
10 TENANT'S PROPERTY

11 All of Tenant's Property which may be installed or placed in or upon the Premises  
12 by Tenant shall remain the property of Tenant. Tenant may assign, hypothecate,  
13 encumber, mortgage or create a security interest in or upon Tenant's Property in the  
14 Premises without the consent of Landlord and may remove Tenant's Property at any time  
15 during the Term. Landlord waives any right it may have in Tenant's Property. To the  
16 extent Landlord may have a lien on or security interest in the Tenant's Property pursuant  
17 to this Lease, by law or otherwise, Landlord hereby waives, and agrees not to assert, such  
18 lien or security interest. Landlord shall provide to Tenant, within ten (10) days after  
19 Tenant's request therefor, a written waiver in form reasonably satisfactory to Landlord  
20 and Tenant evidencing Landlord's waiver of any rights it has or may have in Tenant's  
21 Property.

22 ARTICLE 20  
23 END OF TERM

24 Section 20.1 Surrender of Premises. At the expiration of the Term, Tenant  
25 will quit and surrender the Premises in good condition and repair, excepting, however,  
26 reasonable wear and tear, damage by fire or other casualty, damage by eminent domain,  
27 and repairs and replacements to be made by Landlord hereunder.

28 Section 20.2 Hold Over. If Tenant fails to deliver possession of the  
29 Premises to Landlord at the end of the Term, and unless Landlord and Tenant are, at such  
30 time, engaged in good faith negotiations to extend the Term, Tenant shall be a tenant at  
31 sufferance and shall be liable for Fixed Rent on a monthly basis (or, if applicable, on a  
32 prorated daily basis) in an amount equal to one hundred fifty (150%) percent of the  
33 amount thereof payable by Tenant for the month immediately preceding the last day of  
34 the Term as well as for all Additional Rent payable by Tenant hereunder.

35 ARTICLE 21  
36 TENANT'S RIGHT OF FIRST OFFER

37 Provided an uncured Event of Default does not then exist under this Lease and  
38 further provided there is not then a continuing Non-operating Condition, Tenant shall  
39 have continuing rights of first offer to lease additional space in the Shopping Center  
40 which is contiguous to the Premises and which may become available on and after the  
41 date of this Lease. Notwithstanding the foregoing, the terms and conditions of this  
42 Article 21 shall not be applicable to the initial leasing of any space in the Shopping  
43 Center. At such time that Landlord has knowledge that such space ("**Offered Space**") is  
44 or will become available, Landlord will give Tenant notice (the "**Offering Notice**") of the  
45 terms and conditions Landlord would be willing to accept with respect to the Offered  
46 Space (including, without limitation, the proposed rent, additional rent, scope of  
47 Landlord's proposed tenant improvements, location and Floor Area), and Tenant shall  
48 have thirty (30) days within which to respond to Landlord's offer. In the event Tenant  
49 elects to accept Landlord's offer, then Tenant shall notify Landlord of such election by  
50 giving notice to Landlord during such thirty (30) day period and Landlord and Tenant  
51 shall thereupon enter into an amendment to this Lease for the leasing of the Offered  
52 Space, which amendment shall (a) contain the terms and conditions set forth in the

Offering Notice, (b) provide that the term thereunder shall expire or sooner terminate contemporaneously with the expiration or sooner termination of the Term hereof (subject to extension in accordance with Section 2.2.2 above), and (c) contain such other terms and provisions as either Landlord or Tenant may reasonably require in order to effectuate the incorporation of the Offered Space into the Premises and to otherwise effectuate the intent of this Article 21. Should Tenant decline Landlord's offer or fail to respond thereto, then, and in such event, Tenant shall have been deemed to have waived any prospective rights of first offer to the Offered Space (but Tenant shall not lose any prospective rights of first offer with respect to any space (including, without limitation, the Offered Space) which may in the future become vacant and available), and Landlord may lease the Offered Space to any other party upon substantially the same terms and conditions as that offered to Tenant, provided that such lease is executed within six (6) months after Tenant has declined (or has been deemed to have waived) Landlord's offer with respect to the Offered Space. As used herein, the phrase "***substantially the same terms and conditions as that offered to Tenant***" shall mean terms not materially different and/or a rent of not more than five (5%) percent below the rent requested by Landlord of Tenant. Any dispute between the parties with respect to this Article 21 (including, without limitation, any dispute as to the provisions of the amendment described in this Article 21) shall be resolved by arbitration in accordance with the provisions of Section 16.2 above.

## ARTICLE 22 ONGOING CO-TENANCY

If, at any time during the Term, (a) TJ Maxx (or a Replacement Tenant, as herein defined, thereof), (b) Circuit City (or a Replacement Tenant thereof) or (c) Recognized Tenants (as herein defined) occupying in the aggregate at least 50,000 square feet of Floor Area (excluding the Premises and the TJ Maxx and Circuit City premises referred to in Subsection 2.3.1(e) above) cease to be open for business to the public in their entire respective premises for a period of one hundred eighty (180) consecutive days (such condition being hereinafter referred to as an "***Excess Vacancy***") (excepting therefrom, such periods that the Excess Vacancy exists by reason of the repairing and/or restoring of any portion of such building necessitated by fire or other casualty or condemnation, so long as Landlord is completing [or causing to be completed] with due diligence such repair and/or restoration necessary to cause such building(s) to be in the condition required to open same for business), then in such event, Tenant shall have the right to: (i) pay Alternate Rent in lieu of Fixed Rent and Percentage Rent during the period of such Excess Vacancy, and/or (ii) if the Excess Vacancy continues for a period in excess of three hundred sixty-five (365) continuous days, to terminate this Lease, exercisable by giving Landlord, within one hundred twenty (120) days after the expiration of such 365-day period, not more than sixty (60) days' prior notice, in which event this Lease shall terminate on the date set forth in Tenant's notice of termination without further liability on the part of either Landlord or Tenant, except: (A) for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease, and (B) Landlord, promptly after receiving a statement from Tenant showing the costs and expenses of any alterations made by Tenant, shall reimburse Tenant for the unamortized portion of such costs and expenses based upon the unexpired portion of the Term. If Tenant does not terminate this Lease pursuant to this Article 22, then commencing on the expiration of the aforesaid 120-day period, Tenant shall resume paying full Rent, provided, however, that Tenant shall retain all of its original rights under this Article 22 with respect to any future condition(s) of Excess Vacancy. For the purposes of this Section 22, (I) the term "***Replacement Tenant***" shall mean one (1) or more national or regional retailer(s) of the type typically found in the first-class shopping centers located in the Dallas/Fort Worth, Texas metropolitan area which occupies, in the aggregate, at least ninety percent (90%) of the TJ Maxx or Circuit City, as the case may be, premises referred to in Subsection 2.3.1(e) above, respectively, and (II) the term "***Recognized Tenants***" shall mean nationally or regionally recognized tenants of the type

1 typically found in first-class regional shopping centers located in the Dallas/Fort Worth,  
2 Texas metropolitan area.

3 ARTICLE 23  
4 MISCELLANEOUS

5 Section 23.1 Loading Facilities. Tenant shall have the exclusive right to  
6 utilize the loading facilities serving the Premises (shown on Exhibit B) on a “24 hour a  
7 day”, “365 days a year” basis, subject to Legal Requirements.

8 Section 23.2 Liens. Within thirty (30) days after notice of the filing  
9 thereof, Tenant shall discharge (either by payment or by filing of the necessary bond, or  
10 otherwise) any lien against the Premises and/or Landlord’s interest therein, which may  
11 arise out of any payment due for, or purported to be due for, any labor, services,  
12 materials, supplies or equipment alleged to have been furnished to or for Tenant in, upon  
13 or about the Premises. Similarly, within thirty (30) days after notice of the filing thereof,  
14 Landlord shall discharge (either by payment or by filing of the necessary bond, or  
15 otherwise) any lien against the Premises and/or Landlord’s interest therein, which may  
16 arise out of any payment due for, or purported to be due for, any labor, services,  
17 materials, supplies or equipment alleged to have been furnished to or for Landlord in,  
18 upon or about the Premises.

19 Section 23.3 Broker’s Commission. Landlord and Tenant each warrant  
20 and represent to the other that they did not deal with any real estate broker in connection  
21 with the negotiation, execution and delivery of this Lease, except for The Retail  
22 Connection and The Woodmont Company (collectively the “**Broker**”). Landlord shall  
23 pay the Broker a commission pursuant to a separate agreement. Each party agrees to  
24 indemnify, defend, and save the other harmless from and against any and all liabilities,  
25 costs, causes of action, damages and expenses, including, without limitation, attorneys’  
26 fees, with respect to or arising out of any claims made by any real estate broker (other  
27 than the Broker), agent or finder with respect to this Lease in breach of the foregoing  
28 representation. The provisions of this Section shall survive the expiration or earlier  
29 termination of this Lease.

30 Section 23.4 Force Majeure. Except as otherwise expressly set forth  
31 herein, in the event either party hereto shall be delayed or hindered in, or prevented from,  
32 the performance of any act required hereunder by reason of strikes, failure of power,  
33 riots, insurrection, war, earthquake, hurricane or tornado (or comparable weather  
34 conditions of unusual severity), or other reasons of an extraordinary nature which are  
35 beyond the reasonable control of the party and which could not have been avoided  
36 through the exercise of due diligence by a party (collectively referred to herein as “**Force**  
37 **Majeure**”), then the performance of any such act shall be excused for a period equal to  
38 the period of the delay. Notwithstanding the foregoing provisions, the following shall not  
39 constitute Force Majeure: (i) the financial inability of a party to perform its obligations  
40 under this Lease; or (ii) delays occurring in the course of complying with applicable  
41 Legal Requirements that could have been avoided through the exercise of due diligence  
42 by a party hereto. A party wishing to invoke this Section shall give the other party notice  
43 of that intention within ten (10) days of the commencement of any event of Force  
44 Majeure and shall, at that time, specify the reasons therefor, the specific provision of this  
45 Lease which will be delayed as a result, and the period of such extension, if known, or if  
46 not known, a reasonable estimate thereof.

47 Section 23.5 Consents. Except as may be otherwise expressly set forth in  
48 this Lease, whenever under this Lease provision is made for either party’s securing the  
49 consent or approval of the other party, (i) such consent or approval shall be in writing and  
50 shall not be unreasonably withheld, delayed or conditioned, and (ii) in all matters  
51 contained herein, both parties shall have an implied obligation of reasonableness.

1           Section 23.6     Costs. Whenever this Lease requires the performance of an  
2 act by a party, such party shall perform the act at its own cost and expense, unless  
3 expressly provided to the contrary.

4           Section 23.7     Attorneys' Fees. In any action or proceeding hereunder  
5 (whether to enforce the terms and provisions of an indemnity or otherwise), the  
6 prevailing party shall be entitled to recover from the other party the prevailing party's  
7 reasonable costs and expenses in such action or proceeding, including reasonable  
8 attorneys' fees, costs and expenses. Except as otherwise set forth herein, if either party is  
9 sued by a third party as a result of a violation of a covenant or warranty herein contained  
10 by the other party hereto, then the party who has violated the covenant or warranty shall  
11 be responsible for the reasonable costs and expenses in such action or proceeding against  
12 the non violating party, including reasonable attorneys' fees, costs and expenses.

13          Section 23.8     Survival of Obligations. The obligation to pay any sums due  
14 to either party from the other that by the terms herein would not be payable, or are  
15 incapable of calculation, until after the expiration or sooner termination of this Lease  
16 shall survive and remain a continuing obligation until paid. All indemnity obligations  
17 under this Lease shall survive the expiration or earlier termination of this Lease.

18          Section 23.9     Non-Waiver. The failure of Landlord or Tenant to insist upon  
19 the strict performance of, or to enforce, any provision, covenant or condition herein shall  
20 not be deemed to be a waiver thereof, nor void or affect the right of the aggrieved party to  
21 enforce the same covenant or condition on the occasion of any subsequent breach or  
22 default; nor shall the failure of either party to exercise any option in this Lease upon any  
23 occasion arising therefor be deemed or construed to be a waiver of the right to exercise  
24 that same kind of option upon any subsequent occasion.

25          Section 23.10    Rights Cumulative. Unless expressly provided to the contrary  
26 in this Lease, each and every one of the rights, remedies and benefits provided by this  
27 Lease shall be cumulative and shall not be exclusive of any other such rights, remedies  
28 and benefits allowed by applicable Legal Requirements.

29          Section 23.11    Definition of Landlord. The term "**Landlord**" shall mean  
30 only the person or entity which, from time to time, shall then own the Shopping Center,  
31 and in the event of the transfer by such owner of its interest in the Shopping Center, as  
32 the same may be encumbered, such owner shall (except to the extent of (1) claims made  
33 by Tenant against Landlord which arose prior to the effective date of the transfer of such  
34 ownership interest, and/or (2) judgments obtained by Tenant against Landlord, on or prior  
35 to the effective date of the transfer of such ownership interest) thereupon be released and  
36 discharged from all covenants and obligations of Landlord thereafter accruing, but such  
37 covenants and obligations shall be binding during the Term upon each new owner for the  
38 duration of such owner's ownership.

39          Section 23.12    Successors and Assigns. The provisions of this Lease shall be  
40 binding upon and shall inure to the benefit of the parties hereto and their respective heirs,  
41 executors, administrators, successors and assigns.

42          Section 23.13    Limitation of Landlord's Liability. Except with respect to  
43 insurance proceeds or condemnation awards received by Landlord which are required by  
44 the terms of this Lease to be applied to the repair or restoration of the Premises or the  
45 Shopping Center, Tenant shall, on and after the Delivery Date, look only to Landlord's  
46 estate and property in the Shopping Center (or the proceeds from the sale of all or any  
47 portion thereof) and net income derived from the Shopping Center, as the same may then  
48 be encumbered as expressly permitted hereunder, for the satisfaction of Tenant's  
49 remedies for the collection of a judgment (or other judicial process) requiring the  
50 payment of money by Landlord hereunder and no other property or assets of Landlord, its  
51 officers, directors, stockholders, members or partners shall be subject to levy, execution  
52 or other enforcement procedure for the satisfaction of Tenant's remedies under or with



1 respect to this Lease. Except with respect to the limitation on personal liability  
2 hereinabove set forth, the provisions of this Section 23.13 shall not be deemed or  
3 construed to limit Tenant's rights and remedies pursuant to this Lease or which may be  
4 available at law or in equity.

5           Section 23.14   Limitation of Tenant's Liability. Landlord, its successors and  
6 assigns, shall look solely to the assets, if any, of Tenant and its successors and assigns,  
7 for the satisfaction of any claim arising from or under this Lease and shall not seek to  
8 impose personal liability on any shareholder, officer, director, member or employee of  
9 Tenant or any of its Affiliates.

10           Section 23.15   Joint and Several Liability. If either party consists of more  
11 than one person, then the persons constituting such party shall be jointly and severally  
12 liable hereunder.

13           Section 23.16   Severability. If any term, covenant, condition or provision of  
14 this Lease is held by a court of competent jurisdiction to be invalid, void or  
15 unenforceable, the remainder of the provisions hereof shall remain in full force and effect  
16 and shall in no way be affected, impaired, or invalidated thereby.

17           Section 23.17   Grammatical Usages and Construction. In construing this  
18 Lease, feminine or neuter pronouns shall be substituted for those masculine in form and  
19 vice versa, and plural terms shall be substituted for singular and singular for plural in any  
20 place in which the context so requires. This Lease shall be construed without regard to  
21 (i) the identity of the party who drafted the various provisions hereof or (ii) the addition  
22 or deletion of text made during the negotiation of this Lease. Moreover, each and every  
23 provision of this Lease shall be construed as though all parties hereto participated equally  
24 in the drafting thereof. As a result of the foregoing, any rule or construction that a  
25 document is to be construed against the drafting party shall not be applicable hereto.

26           Section 23.18   Table of Contents, Line Numbering and Paragraph Headings.  
27 The table of contents and line numbering, if any, and section headings are inserted only  
28 for convenience and in no way define, limit or describe the scope or intent of this Lease,  
29 nor in any way affect this Lease.

30           Section 23.19   Definition of Hereunder, Herein, etc.. Unless the context  
31 clearly indicates to the contrary, the words "herein," "hereof," "hereunder," "hereafter,"  
32 and words of similar import refer to this Lease and all the Exhibits attached hereto as a  
33 whole and not to any particular section, subsection, or paragraph hereof.

34           Section 23.20   Short Form Lease. Upon the request of either party  
35 following the execution and delivery of this Lease, Landlord and Tenant shall execute a  
36 short form lease or memorandum for recording, which shall be in form and substance as  
37 either party shall reasonably request. In no event shall the amount of Fixed Rent reserved  
38 hereunder be included in any such short form lease or memorandum. The party  
39 requesting the execution and delivery of any such short form lease or memorandum shall  
40 be responsible for arranging for the recording thereof (including any recording charges  
41 therefor).

42           Section 23.21   Entire Agreement and Modification. This Lease constitutes  
43 the entire agreement of the parties hereto, and all prior agreements between the parties,  
44 whether written or oral, are merged herein and, except as may be specifically set forth  
45 herein, shall be of no force and effect. This Lease cannot be changed, modified or  
46 discharged orally, but only by an agreement in writing, signed by the party against whom  
47 enforcement of the change, modification or discharge is sought.

48           Section 23.22   No Joint Venture or Partnership Created by Lease. Nothing  
49 contained herein shall be deemed or construed as creating the relationship of principal  
50 and agent or of partnership or of joint venture between the parties hereto.



Section 23.23     Tenant's Tradename. Landlord shall not make use of Tenant's tradename [i.e., "*Bed Bath & Beyond*"®] in any advertising or marketing material, including, without limitation, on any internet website, without obtaining Tenant's prior written approval, which may be withheld in Tenant's sole and absolute discretion.

Section 23.24      Counterparts. This instrument may be executed in several counterparts, each of which shall be deemed an original. The signatures to this instrument may be executed and notarized on separate pages, and when attached to this instrument, shall constitute one complete document.

Section 23.25      Waiver of Trial by Jury. Landlord and Tenant hereby mutually waive any and all rights which either may have to request a jury trial in any proceeding between them at law or in equity.

Section 23.26 Governing Law. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State in which the Premises are located.

[Signature page follows]

1  
2 IN WITNESS WHEREOF, the parties have executed this instrument under seal  
3 the day and year first-above written.  
4

**LANDLORD:**

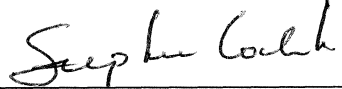
WITNESS:

**ROCKWALL CROSSING, LTD.,** a  
Texas limited partnership

By: **WOODMONT ROCKWALL  
GP, L.L.C.,** a Texas limited  
liability company, its General  
Partner



[SEAL]

By:   
Name: Stephen Coslik  
Title: Managing Member

**TENANT:**



ATTEST:

**BED BATH & BEYOND INC.,** a New  
York corporation



Name: Alan M. Freeman  
Title: (Assistant) Secretary

[SEAL]

By:   
Name: Warren Eisenberg  
Title: Co-Chairman of the Board of  
Directors 

1  
2 IN WITNESS WHEREOF, the parties have executed this instrument under seal  
3 the day and year first-above written.  
4

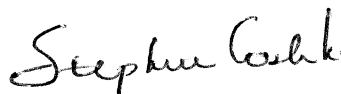
**LANDLORD:**

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Texas limited partnership

By: **WOODMONT ROCKWALL  
GP, L.L.C.,** a Texas limited  
liability company, its General  
Partner

By:



Name: Stephen Coslik  
Title: Managing Member

\_\_\_\_\_  
[SEAL]

**TENANT:**

ATTEST:

**BED BATH & BEYOND INC.,** a New  
York corporation

By: \_\_\_\_\_

Name: Warren Eisenberg

Title: Co-Chairman of the Board of  
Directors

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: (Assistant) Secretary

\_\_\_\_\_  
[SEAL]

## INDEX OF EXHIBITS

Exhibit A	Legal Description of Shopping Center
Exhibit B	Site Plan
Exhibit C	Form of Rent Commencement and Expiration Date Agreement
Exhibit D	Specifications for Landlord's Work
Exhibit D-1	Exterior Elevations of the Premises, and Sidewalk Plan
Exhibit D-2	Exterior Elevations of the Shopping Center
Exhibit E	Permitted Encumbrances
Exhibit F	Tenant's Signage
Exhibit G	Form of Subordination, Non-Disturbance and Attornment Agreement
Exhibit H	Form of Subtenant Recognition Agreement
Exhibit I	Form of Delivery Date Notice
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Exhibit K-2	Existing Leases
Exhibit L	[Intentionally Omitted]
Exhibit M	Prohibited Uses

Exhibit A

Legal Description of Shopping Center

BEING a tract of land situated in the J.D. McFarland Survey, Abstract No. 145, City of Rockwall, Rockwall County, Texas, and being all of that called 8.44 acre tract as conveyed to L&B Land & Cattle Co. as recorded in Volume 1406, Page 120 and also being a part of that called 94.126 acre tract as conveyed to PRS Realty II, L.P., as recorded in Volume 961, Page 55 of the Deed Records of Rockwall County, Texas, said tract being more particularly described by metes and bounds as follows:

BEGINNING at a concrete right of way post found at the point of intersection of the existing right of way of Mims Road with the existing right of way of Interstate Highway No. 30, said point also be the most westerly corner of said 8.44 acre tract;

THENCE along the existing right of way of Interstate Highway No. 30 and a curve to the left having a central angle of 14 degrees 51 minutes 09 seconds, a radius of 3970.90 feet, a chord distance of 1026.47 feet that bears North 42 degrees 49 minutes 01 seconds East, around said curve an arc distance of 1029.35 feet to a concrete right of way post found for corner;

THENCE North 35 degrees 12 minutes 58 seconds East, continuing along the existing right of way of Interstate Highway No. 30, a distance of 436.20 feet to a ½" iron rod set at the most northerly corner of said 94.126 acre tract and also being the most westerly corner of Lot 1, Block C of Rockwall Business Park East, Phase Three, an addition to the City of Rockwall as recorded in Slide B, Page 291 of the Plat Records of Rockwall County, Texas;

THENCE South 45 degrees 50 minutes, 36 seconds East, leaving the existing right of way of Interstate Highway No. 30, a distance of 1211.07 feet to a ½" iron rod set for corner on the existing right of way of Ralph Hall Parkway;

THENCE along the existing right of way of Ralph Hall Parkway, the following:

South 62 degrees, 30 minutes, 30 seconds West, a distance of 786.50 feet to a ½" iron rod set for corner;

North 45 degrees 54 minutes 44 seconds West, a distance of 109.06 feet to a ½" iron rod found for corner;

South 42 degrees 53 minutes 27 seconds West, a distance of 445.10 feet to a ½" iron rod set for corner at the most easterly corner of a tract as conveyed to Texas Department of Transportation ("TxDot") as recorded in Volume 65, Page 591 of said Deed Records;

THENCE, North 46 degrees 19 minutes 47 seconds West, leaving the existing right of way of Ralph Hall Parkway and along the northeast line of said TxDot tract, a distance of 650.45 feet to a ½" iron rod set for corner;

THENCE, South 43 degrees 31 minutes 18 seconds West, a distance of 304.49 feet to a concrete right of way post found on the existing right of way of Mims Road;

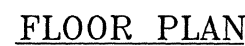
THENCE, North 26 degrees 17 minutes 25 seconds West, along the existing right of way of Mims Road, a distance of 133.05 feet to the POINT OF BEGINNING and containing 26.0915 acres of land, more or less.

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Exhibit B

Site Plan



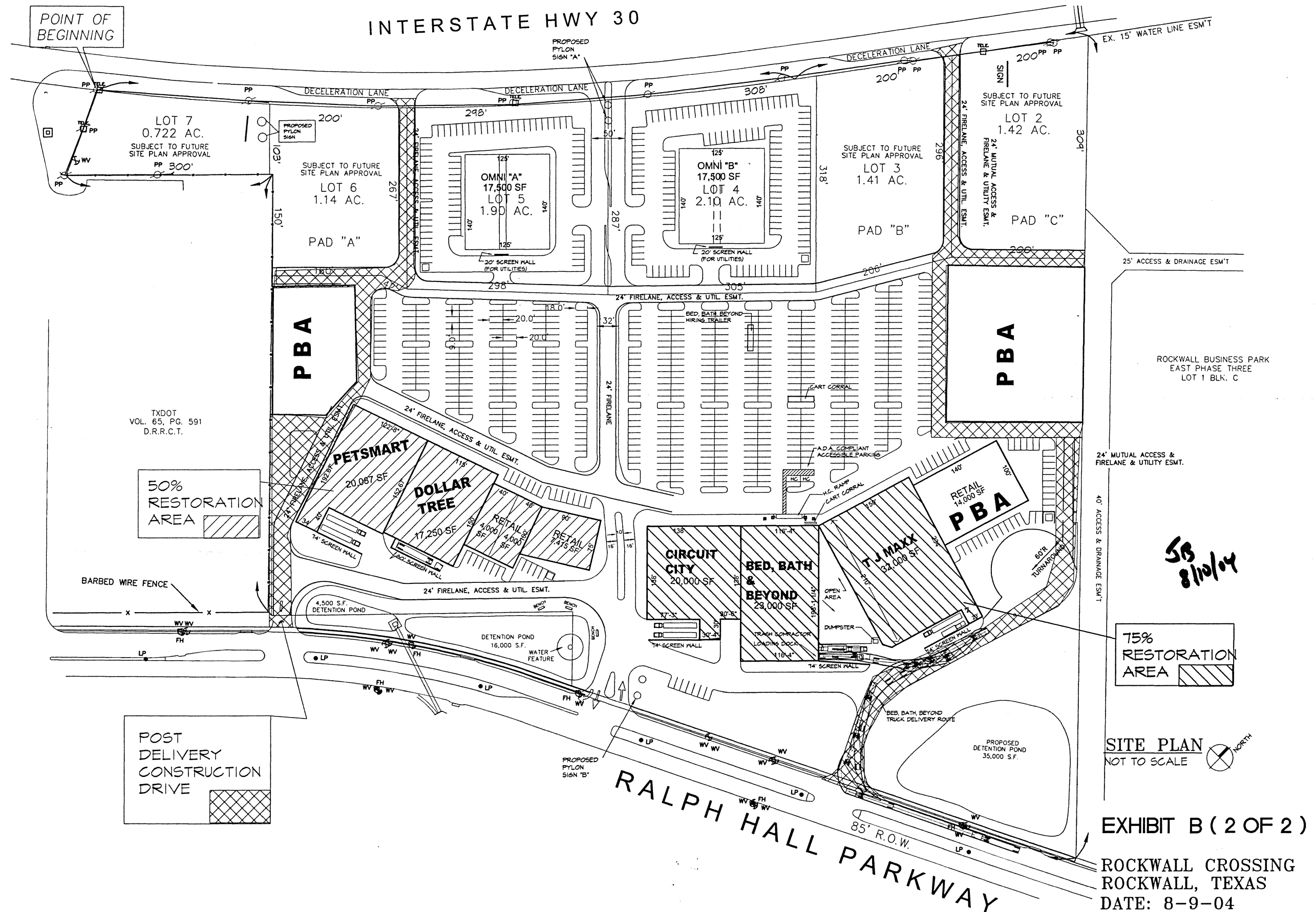


An aerial photograph of a coastal area with a proposed road labeled "RALPH HALL PARKWAY". The road runs diagonally from the bottom left towards the top right. To the right of the road is a body of water. Various points are marked on the map with letters like WY, FH, LP, and FR. A label "85' R.O.W." indicates a right-of-way boundary. The map also shows some existing infrastructure like a bridge or overpass crossing the water.

SITE PLAN

$$1^{19} = 60$$

ROCKWALL CROSSING  
ROCKWALL, TEXAS  
DATE: 8-9-04



1 Exhibit C

2  
3 Rent Commencement and Expiration Date Agreement

4 THIS RENT COMMENCEMENT AND EXPIRATION DATE AGREEMENT,  
5 made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between  
6 \_\_\_\_\_ ("Landlord") and BED BATH & BEYOND INC.  
7 ("Tenant").

8 **W I T N E S S E T H :**

9 WHEREAS, Landlord is the owner of a certain shopping center known as  
10 Rockwall Marketplace (the "**Shopping Center**"), situated in Rockwall, Texas;

11 WHEREAS, by that certain lease dated August \_\_, 2004 (the "**Lease**"), Landlord  
12 leased a portion (the "**Premises**") of the Shopping Center to Tenant;

13 WHEREAS, Tenant is in possession of the Premises and the Term of the Lease  
14 has commenced; and

15 WHEREAS, under Section 2.2 of the Lease, Landlord and Tenant agreed to enter  
16 into an agreement setting forth certain information in respect of the Premises and the  
17 Lease.

18 NOW, THEREFORE, Landlord and Tenant agree as follows:

19 1. The Rent Commencement Date occurred on \_\_\_\_\_, 200\_\_\_\_.

20 2. The **Initial Term** of the Lease shall expire on January 31, 20\_\_\_\_, unless  
21 Tenant exercises any option to extend the Term of the Lease or unless the Lease  
22 terminates earlier as provided in the Lease.

23 3. The date of commencement of the **first Renewal Period** shall be February  
24 1, 20\_\_\_\_, if Tenant effectively exercises its option in respect thereof, and if Tenant does  
25 so, the Term of the Lease shall expire on January 31, 20\_\_\_\_, unless Tenant exercises any  
26 option to further extend the Term of the Lease or unless the Lease terminates earlier as  
27 provided in the Lease.

28 4. The date of commencement of the **second Renewal Period** shall be  
29 February 1, 20\_\_\_\_, if Tenant effectively exercises its option in respect thereof, and if  
30 Tenant does so, the Term of the Lease shall expire on January 31, 20\_\_\_\_, unless Tenant  
31 exercises any option to further extend the Term of the Lease or unless the Lease  
32 terminates earlier as provided in the Lease.

33 5. The date of commencement of the **third Renewal Period** shall be February  
34 1, 20\_\_\_\_, if Tenant effectively exercises its option in respect thereof, and if Tenant does  
35 so, the Term of the Lease shall expire on January 31, 20\_\_\_\_, unless the Lease terminates  
36 earlier as provided in the Lease.

37 6. The date of commencement of the **fourth Renewal Period** shall be  
38 February 1, 20\_\_\_\_, if Tenant effectively exercises its option in respect thereof, and if  
39 Tenant does so, the Term of the Lease shall expire on January 31, 20\_\_\_\_, unless the  
40 Lease terminates earlier as provided in the Lease.

41 7. Capitalized terms used, but not defined, herein shall have the meanings  
42 ascribed to them in the Lease.

43 IN WITNESS WHEREOF, the parties hereto have caused this Rent  
44 Commencement and Expiration Date Agreement to be executed the date and year first  
45 above written.

**LANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

BED BATH & BEYOND INC., a New York  
corporation

By: \_\_\_\_\_

Name: Warren Eisenberg

Title: Co-Chairman of the Board of Directors

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Exhibit D

Specifications for Landlord's Work

*Rockwall, Texas*

**Exhibit D - Standard Landlord's Work**

08/09/04

[All capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to them in the Lease. The terms of the Lease regarding Landlord's Work shall be deemed to supplement the provisions of the Exhibit D, to the extent not inconsistent with the terms of this Exhibit D. It is specifically understood and agreed that all materials and supplies shall be installed in strict accordance with all manufacturers' specifications.]

**Landlord's Final Plans and Specifications**

Landlord shall provide one (1) complete full size set, one (1) complete ½ size set and one (1) copy of electronic file of the Final Plans and Specifications as well as each subsequent revision to Landlord's Plans for Tenant's use. Landlord shall develop project-specific Final Plans and Specifications in accordance with following documents:

- A. Tenant's Plans consist of the following: FIXTURE PLAN (F1); FLOOR FINISH PLANS, NOTES AND DETAILS (F2); POWER/SPECIALTY LIGHTING PLANS AND NOTES (F3); LIGHTING PLANS AND NOTES (F4); and HIGH PILE STORAGE PLAN (F5). Tenant's Plans are project-specific design-development documents. In the event of a conflict between Tenant's Plans and "Tenant's Prototype Drawings and Specifications"(defined below), then Tenant's Plans shall govern and prevail. Tenant's Plans shall be delivered to Landlord in accordance with Article 3 of the Lease.
- B. Tenant's Prototype Drawings and Specifications entitled "Bed Bath & Beyond Prototype Drawings and Specifications – version 1.2004, dated 3-29-04 developed by Casco Architects, comprise the following drawings and specifications:

At the time the Preliminary Plans are 85% complete, LL shall be obligated to issue Preliminary Plans to "BBBY Consultant" for review against "Quality Control Checklist". The cost to LL for this review is \$2500.00 plus reimbursable associated with printing and shipping. If Preliminary Plans are "rejected" or noted "revise and resubmit" by the BBBY consultant then LL shall be obligated for all expenses related to these subsequent reviews until Preliminary Plans are deemed approved. Project specific BBBY consultants to be determined by BBBY post lease execution. If LL fails to pay consultant, then Tenant shall have the right to receive a credit against "Changes" under the lease or deduct amount from Rent in order to satisfy outstanding invoice.

All site specific plans and specifications developed by Landlord and submitted to Tenant for review and approval must be in the same Format as Tenant's Prototypical Plans and Specifications as outlined within Item C. below of this Exhibit unless otherwise authorized in writing by Tenant.

Tenant shall not be obligated to review nor approve improperly formatted Landlord's Plans and/or specifications, nor shall said submission be deemed to be in compliance with Section 3.2 "Plan Approvals" of the Lease, unless said Format is complied with.

Tenant reserves the right to immediately disapprove and return improperly formatted plans to the Landlord and the Landlord shall be solely responsible for all costs and/or delays relating to revising/correcting and resubmitting the plans and/or specifications to Tenant for re-review and approval.

C.

<u>SHEET #</u>	<u>DRAWING TITLE</u>	<u>CURRENT ISSUE</u>	<u>DRAWING DATE</u>
A0.1	Code Data, Project Data and Responsibility Schedule	Prototype Version 1.2004	03/29/04
A0.2	Generic Site Requirements Plan	Prototype Version 1.2004	03/29/04
A1.1	Site Details	Prototype Version 1.2004	03/29/04
A1.2	Demolition Plan	Prototype Version 1.2004	03/29/04
A2.1	Store Fixture/Egress Path Plan & Notes	Prototype Version 1.2004	03/29/04
A2.2	Floor Plan	Prototype Version 1.2004	03/29/04
A2.3	Floor Finish Plan	Prototype Version 1.2004	03/29/04
A2.4	Reflected Ceiling Plans & Notes	Prototype Version 1.2004	03/29/04
A2.5	Roof Plan Details & Notes	Prototype Version 1.2004	03/29/04
A3.1	Finish Schedule, Part Types, Storefront Types & Vestibule Elevations	Prototype Version 1.2004	03/29/04
A3.2	Door Hardware, Door Schedule & Door Types	Prototype Version 1.2004	03/29/04
A3.3	BBB National Account Vendors & Specified Manufactures w/Distribution Schedule	Prototype Version 1.2004	03/29/04
A4.1	Exterior Elevations	Prototype Version 1.2004	03/29/04

*JB*  
*8/11/04*



A5.1	Building Sections, Interior Wall Sections	Prototype Version 1.2004	03/29/04
A5.2	Exterior Wall Sections	Prototype Version 1.2004	03/29/04
A5.3	Exterior Wall Sections	Prototype Version 1.2004	03/29/04
A5.4	Exterior Wall Sections	Prototype Version 1.2004	03/29/04
A5.5	Interior Wall Sections	Prototype Version 1.2004	03/29/04
A5.6	<u>Alternate</u> Scissor Lift Plan, Section, Specification & Notes	Prototype Version 1.2004	03/29/04
A6.1	Exterior Details	Prototype Version 1.2004	03/29/04
A6.2	Interior & Exterior Details	Prototype Version 1.2004	03/29/04
A6.3	Slatwall Details at Storefront	Prototype Version 1.2004	03/29/04
A7.1	Large Scale Plans	Prototype Version 1.2004	03/29/04
A7.2	Large Scale Plans	Prototype Version 1.2004	03/29/04
A7.2a	<u>Alternate</u> Large Scale Plans (38k SF Building)	Prototype Version 1.2004	03/29/04
A8.1	Interior Details	Prototype Version 1.2004	03/29/04
A8.2	Interior Details	Prototype Version 1.2004	03/29/04
A8.3	Customer Service Desk	Prototype Version 1.2004	03/29/04
A8.4	Register Bays	Prototype Version 1.2004	03/29/04
A8.5	Remote Service Desks	Prototype Version 1.2004	03/29/04
A9.1	Interior Elevations	Prototype Version 1.2004	03/29/04
A9.1a	<u>Alternate</u> Interior Elevations (38K SF Building)	Prototype Version 1.2004	03/29/04
A9.2	<u>Alternate</u> Elevations & Details	Prototype Version 1.2004	03/29/04
A9.3	<u>Alternate</u> Plans, Elevations & Details	Prototype Version 1.2004	03/29/04
A9.4	Fine China Store Fixture Plan & Vendor Responsibility Schedule	Prototype Version 1.2004	03/29/04
A9.4a	<u>Alternate</u> Fine China Store Fixture Plan & Vendor Responsibility Schedule (Corner)	Prototype Version 1.2004	03/29/04
A9.4b	<u>Alternate</u> Fine China Store Fixture Plan & Vendor Responsibility Schedule (Freestanding w/o Bulkhead)	Prototype Version 1.2004	03/29/04
A9.5	Fine China Plans, Wall Sections & Details	Prototype Version 1.2004	03/29/04
A9.5a	<u>Alternate</u> Fine China Plans, Wall Sections & Details (Corner)	Prototype Version 1.2004	03/29/04
HP1.1	High Pile Storage Plan & Fixture-Shelf Details	Prototype Version 1.2004	03/29/04
S1.1	Structural General Information & Typical Details	Prototype Version 1.2004	03/29/04
S2.1	Foundation Plan	Prototype Version 1.2004	03/29/04
S2.2	Roof Framing Plan	Prototype Version 1.2004	03/29/04
S3.1	Foundation Details	Prototype Version 1.2004	03/29/04
S3.2	Roof Framing Details	Prototype Version 1.2004	03/29/04
P1.1	Plumbing Riser Diagrams and Fixture Schedule	Prototype Version 1.2004	03/29/04
P2.1	Plumbing Floor Plan	Prototype Version 1.2004	03/29/04
P3.1	Plumbing Enlarged Plans & Details	Prototype Version 1.2004	03/29/04
FP1.0	Fire Sprinkler Plans, Notes & Details	Prototype Version 1.2004	03/29/04
FA1.0a	Base System Fire Alarm Plans, Notes & Details	Prototype Version 1.2004	03/29/04
FA1.1a	Base System Misc. Notes & Details	Prototype Version 1.2004	03/29/04
FA1.2a	Base System Fire Alarm Matrix & Calcs	Prototype Version 1.2004	03/29/04
FA1.0b	<u>Alternate</u> Fire Alarm Plans w/Occupant Notification Alarm	Prototype Version 1.2004	03/29/04
FA1.1b	<u>Alternate</u> Fire Plans w/Occupant Notification Notes & Details	Prototype Version 1.2004	03/29/04
FA1.2b	<u>Alternate</u> Fire Alarm Plans w/Occupant Notification Matrix & Calcs	Prototype Version 1.2004	03/29/04
FA1.0c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection	Prototype Version 1.2004	03/29/04
FA1.1c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection Notes & Details	Prototype Version 1.2004	03/29/04
FA1.2c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection Matrix & Calcs	Prototype Version 1.2004	03/29/04
M1.1	Mechanical General Information	Prototype Version 1.2004	03/29/04

M2.1	Mechanical Floor Plan	Prototype Version 1.2004	03/29/04
M3.1	Mechanical Large Scale Plans & Details	Prototype Version 1.2004	03/29/04
M4.1	Mechanical Schedules & Details	Prototype Version 1.2004	03/29/04
E1.1	Electrical General Information & Schedules	Prototype Version 1.2004	03/29/04
E2.1	Power Plan	Prototype Version 1.2004	03/29/04
E2.2	Lighting Layout Plan	Prototype Version 1.2004	03/29/04
E2.3	Lighting Circuiting Plan	Prototype Version 1.2004	03/29/04
E2.4	Specialty Lighting Plans & Diagrams	Prototype Version 1.2004	03/29/04
E3.1	Electrical Large Scale Plans & Details	Prototype Version 1.2004	03/29/04
E3.2	Lighting Sequencing	Prototype Version 1.2004	03/29/04
E3.3	Electrical Details	Prototype Version 1.2004	03/29/04
E4.1	Electrical Schedules	Prototype Version 1.2004	03/29/04
E4.2	Electrical Diagrams	Prototype Version 1.2004	03/29/04
E4.3	Electrical Schedules	Prototype Version 1.2004	03/29/04
E4.4	Novar Wiring Details	Prototype Version 1.2004	03/29/04
E4.4a	<u>Alternate</u> Novar Wiring Details for RTU's Other Than Lennox	Prototype Version 1.2004	03/29/04
E4.5	ETM Details for Lennox RTU's	Prototype Version 1.2004	03/29/04
E4.5a	<u>Alternate</u> ETM Wiring Details For Non-Lennox RTU's	Prototype Version 1.2004	03/29/04
E5.1	Fine China Power, Lighting & Specialty Lighting	Prototype Version 1.2004	03/29/04
E5.1a	<u>Alternate</u> Fine China Power, Lighting Specialty Lighting (Corner)	Prototype Version 1.2004	03/29/04
E5.1b	<u>Alternate</u> Fine China Power, Lighting, Specialty Lighting (Freestanding w/o Bulkhead)	Prototype Version 1.2004	03/29/04
E6.1	<u>Bid Alternate:</u> Modular Wiring (Fastlane) Plans	Prototype Version 1.2004	03/29/04
E6.2	<u>Bid Alternate:</u> Modular Wiring (Fastlane) Details	Prototype Version 1.2004	03/29/04

Project Manual for Bed Bath & Beyond, dated March 29, 2004.

- D. Neither Tenant's Plans nor Tenant's Prototype Drawings and Specifications reflect regional or governmental requirements. Such regional/governmental requirements may include but not limited to the following: Stockroom/Sales Area partition between sales area and stockroom may be required including all openings through the partition be properly protected; Disability access to mezzanine level such as an ADA lift, limited use/limited application elevator, or elevator may be required including installation of phone lines to cab; The number of restroom fixtures, number of exit stairs, smoke purge and pressurization system, smoke/heat vents, draft curtains, fire rated walls, ceiling or floors required to meet high pile storage requirements, etc. may need to be modified to comply with all applicable Legal Requirements.

In addition, Landlord shall include the following items as part of the Final Plans and Specifications:

1. All architectural elevations and construction details for all pylon, monument and directional signs located throughout the Shopping Center.

2. All architectural elevations and partial sidewalk plans of all other tenants and occupants of the Shopping Center.

3. Complete civil engineering documents that describe planned improvements to the Shopping Center, including geo-technical and stormwater design reports.

Site Specifications

- A. Landlord represents that all site development and civil work shall be completed in accordance with the Geotechnical Engineering Investigation Report (dated 04-20-2004) prepared by Reed Engineering Group and also in accordance with the civil engineering drawings (sheet # 1 to 20 of 21 see index of drawings attached to this Exhibit D as addendum A) prepared by Doupbrate & Associates, Inc. (see index for datesAdditional City required changes may be necessary before final approval. Landlord shall furnish any revisions to Tenant.
- B. The minimum lighting level throughout the Shopping Center (parking areas, traffic drives, service drives, etc.) shall be at least two (2) foot-candles, measured 30" above grade. Landlord shall include a photometric plan, which shall confirm that the proposed lighting meets these requirements as part of the Final Plans and Specifications. Landlord shall not include illumination from building-mounted wall packs when

calculating the required foot-candle level. Landlord shall provide low level security lighting min. (1) foot-candle throughout center that shall remain illuminated from dusk to dawn seven days a week.

#### **Building Requirements**

The following describes project-specific elements of Landlord's Work in addition to the scope detailed in Tenant's Prototype Drawings and Specifications:

- A. Clear Height - Building systems (mechanical, plumbing, electrical) shall be designed to allow Tenant to stock merchandise up to at least 16'-6" a.f.f. All mechanical, plumbing and electrical elements shall be located at least 16'-6" a.f.f., except for Tenant's light fixtures. Fire protection sprinkler piping shall be located at least 16'-6" a.f.f., sprinkler heads shall be located at least 18'-0" a.f.f. Bottom of all structural elements shall be located at least 18'-0" a.f.f.
- B. Fire Alarm System - Landlord shall furnish and install a fire alarm system in accordance with the minimum base standards set forth in Tenant's Prototypical Plans and Specifications, or more stringent requirements as may be required by law. Landlord shall be responsible for monitoring the fire alarm system for a min. (30) thirty days following the Delivery Date.

LL shall issue complete fire alarm system submittal consisting of site specific drawings and equipment cut sheets to CCI for their review and approval no later than (12) weeks prior to projected delivery date. The fixed cost to LL for this initial review is \$550.00 plus reimbursables associated with printing and shipping. If subsequent reviews are required by CCI due to initial rejection, then fixed cost to LL for subsequent reviews shall be on a time and material basis. The hourly rate for these subsequent reviews shall be \$125.00/hour plus reimbursables associated with printing and shipping.

Mr. Will Smith  
Code Consultants, INC.  
Work: (314) 991-2633  
Fax: (314) 991-4614  
1804 Borman Circle Drive  
St. Louis, Missouri 63146-4136

- C. 1<sup>st</sup> Level Structure (sales/non-sales level) - Landlord shall provide a minimum 4000 psi concrete floor slab having a minimum thickness of 4". Structural system shall be rated to accept 125 lb. per square foot of live load. If rebar or pretensioned or post-tensioned steel is required, it shall not be placed within the top 2 1/2" of the concrete slab.
- D. Sprinkler System - The sprinkler system shall be designed to allow fixturing and storage to be within 18" of heads. System shall comply with NFPA 231-C and or NFPA13, (high-rack storage) for class IV commodity solid shelves, minimum 4 foot aisles. Typically, .486 GPM over 2000 sf will be required.
- E. Landlord shall provide sprinkler system sufficient to meet the requirements specified within Tenant's Prototype Drawings and Specifications without utilizing a fire pump if existing water pressure allows. If water pressure is inadequate and system cannot be designed to properly function without incorporating a fire pump, then Landlord shall locate Fire Pump outside of Premises. Landlord shall maintain Fire Pump for the full term of the Lease without any cost to Tenant. Landlord shall, without any cost to Tenant and for the full term of the Lease, routinely inspect, test, and maintain the Fire Pump in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems (Chapter 5 of 1998 Edition).
- F. LL shall issue complete fire protection submittal consisting of site specific head locations, hydraulic calculations and equipment cut sheets to CCI for their review and approval no later than (12) weeks prior to projected delivery date. The fixed cost to LL for this initial review is \$550.00 plus reimbursables associated with printing and shipping. If subsequent reviews are required by CCI due to initial rejection, then fixed cost to LL for subsequent reviews shall be on a time and material basis. The hourly rate for these subsequent reviews shall be \$125.00/hour plus reimbursables associated with printing and shipping.

If BBBY national fire protection consultants are needed to assist LL with approvals from governmental authorities such as completing technical discussions with governmental authorities to explain/clarify design parameters, calculations, high pile storage commodity classifications, fire pump design, etc., then LL shall directly pay consultant for all time and materials. If LL fails to pay consultant, then Tenant shall have the right to receive a credit against "Changes" under the lease or deduct amount from Rent in order to satisfy outstanding invoice.

Mr. Will Smith  
Code Consultants, INC.  
Work: (314) 991-2633  
Fax: (314) 991-4614  
1804 Borman Circle Drive  
St. Louis, Missouri 63146-4136

- G. If fire-proofing of structural elements is required, then Landlord shall use intumescent fire resistive coating. All edges of application shall be neat, clean and straight. All edges of material to be parallel to structural element being treated.

**Construction Coordination Requirements**

- A. Landlord shall provide Tenant with a critical path schedule prior to commencement of Landlord's Work, and shall provide to Tenant's construction project manager an updated critical path schedule every two weeks thereafter until Landlord's Work is completed
- B. Throughout the period during which Landlord's Work is being performed, Landlord shall provide to Tenant's construction project manager, on a weekly basis, then-current photographs of the interior and exterior of the Premises, and the Shopping Center site, showing the progression of Landlord's Work. All photographs shall be in a digital format, and transmitted to Tenant at e-mail address at **BBB.2000photos@bedbath.com**

**Building and Site Signs**

- A. Building Signs -- Landlord shall furnish and install all building signs shown on Exhibits D-1 and F utilizing Tenant's specified vendor only. Landlord is responsible to verify actual number of circuits required with Tenant's specified vendor. Conduit to be installed continuously from Tenant's panel in Premises to sign location(s). Landlord required to execute purchase order with Tenant's specified vendor within 10 weeks prior to Delivery Date. If Landlord fails to execute purchase order within this time frame, then at Tenant's option, Tenant may execute purchase order with Tenant's specified vendor and deduct all costs from rent, (or, at Tenant's option, receive a credit against "Changes" under the lease). If Tenant does not provide written notice to Landlord regarding Tenant's decision to execute purchase order with Tenant's specified vendor, then Landlord shall remain responsible to execute purchase order. Signage and size of signs shall be subject to the Sign Ordinance and approval of the City of Rockwall.
- C. Pylon/Monument/Directional Signs -- Landlord shall furnish and install all pylon /monument /directional signs (s) shown on Exhibit F to this Lease, complete (including, without limitation, sign structure, any required electrical service, sign panels, and Tenant's specified graphics).
- D. Temporary Signs -- commencing on the commencement of construction, and continuing thereafter until (30) thirty days following delivery, Landlord shall install and maintain in accordance with Tenant's Prototype Drawings and Specifications [and Exhibit F to this Lease, as applicable]: (i) a temporary banner bearing the phrase "Coming Soon" on the storefront of the Premises, and (ii) a temporary sign on the site of the [future] Shopping Center, bearing the phrase "Bed Bath & Beyond Coming Soon". At Tenant's request, Landlord shall relocate Tenant's temporary signage, in the event the visibility thereof becomes obstructed.
- E. Landlord shall provide complete shop drawings of all Landlord-furnished signs to Tenant for Tenant's approval at least (12) weeks prior to delivery date.

**Permits and Approvals**

- A. Landlord to secure permits required to allow Tenant to fixture, merchandise (including without limitation permits for it's prepackaged foods), and open for business to the public in the Premises. This to include Health Permit based on no on-site consumption or preparation of food or beverage as outlined in Tenant furnished plans. Landlord is not required to obtain any business permits or license which may be required for the Tenant.

If Seismic calculations, plans and details are required, then Landlord shall be obligated to contract with "Seizmic Inc." no later than (12) weeks prior to delivery. Seizmic Inc. shall provide the necessary services to assist Landlord in securing the fixture permit. These services include completion of all required submittal documents, required applications, responses to inquiries from the authority having jurisdiction and monitoring status of permit. Actual submission of the required documents to the AHJ shall be made only by Seizmic, Inc., or other vendor selected at Tenant's discretion.

Seizmic Inc.  
Contact: Sal Fateen or Genie Fateen  
161 Atlantic Street, Pomona, CA 91768  
Ph. # 909 869 0989

Landlord shall be obligated to take possession of Fixture permit and transfer permit to Tenant's fixture Installer. If fixture permit is required, then Landlord shall secure fixture permit no later than (2) weeks prior to delivery date.

- B. Sprinkler system design shall allow Landlord to obtain and secure "high pile storage" permit.

**Construction Closeout**

- A. Landlord shall be obligated to forward (1) hard copy of all required documents outlined with Section 01700 – Contract Closeouts, of Tenant’s Prototype Specifications / Project Manual to **Digital Reliance Incorporated (DRI), 386 Charmel Place, Columbus, OH 43235, (614) 430-5950, jg@digital-reliance.com**, for purpose of scanning to disk for Tenant's future use. All documents shall be delivered to DRI within forty-five (45) days after the “Substantial Completion Date. The cost associated with this service is \$500.00. All costs associated with this service shall be Landlord's responsibility.

Prior to scanning, DRI will confirm submittal from Landlord meets base minimum requirements and shall inform Landlord directly if certain documents are missing. DRI will not review items for content. The content will be reviewed once electronic file has been recieved by Tenant's Construction Project Manager. Any need for resubmittal due to incorrect content, etc. will be communicated to Landlord from Tenant's Construction Project Manager. Landlord to resubmit amended document to DRI for scanning and incorporation into file until approved by Tenant's Construction Project Manager.

Once Electronic file has been completed, It shall be forwarded directly to Tenant’s Construction Project Manager with transmittal copy to Landlord within sixty (60) days after the “Substantial Completion Date”.

- B. Landlord shall cause its contractor(s) to instruct Tenant’s Construction Project Manager in the operation of any equipment installed pursuant to these specifications. All of Landlord’s Work shall be performed in a manner which will not void, impair or diminish any manufacturers', installers', or contractors' warranties which otherwise would have been provided by such manufacturer, installer, or contractor to either Landlord or Tenant. Two (2) months prior to the end of the warranty period, Landlord must forward a written report to Tenant on the condition of all warranty items.
- C. If Landlord fails to deliver any of the instruments and items (collectively, the “Close-out Documents”) described in the immediately preceding paragraph A within the prescribed thirty (60) day period, then Tenant may provide Landlord with notice of such failure. If Landlord has not remedied such failure within fifteen (15) days after Tenant’s delivery of such notice, then Tenant shall be entitled to an abatement in Rent in the amount of One Hundred (\$100.00) dollars for each day that Landlord has not so delivered all of the Close-out Documents.
- D. Landlord shall be obligated to provide to Tenant within 30 days of Tenants request, copies of manufactures invoice(s), manufactures cut sheets, subcontractor invoices, etc. for items described within Exhibit D - Standard Landlord’s Work as required for Tenant to satisfy submittal for any possible utility rebates, if any.

Addendum A.

Index of Civil Engineering drawings prepared by Douphrate & Associates, Inc.

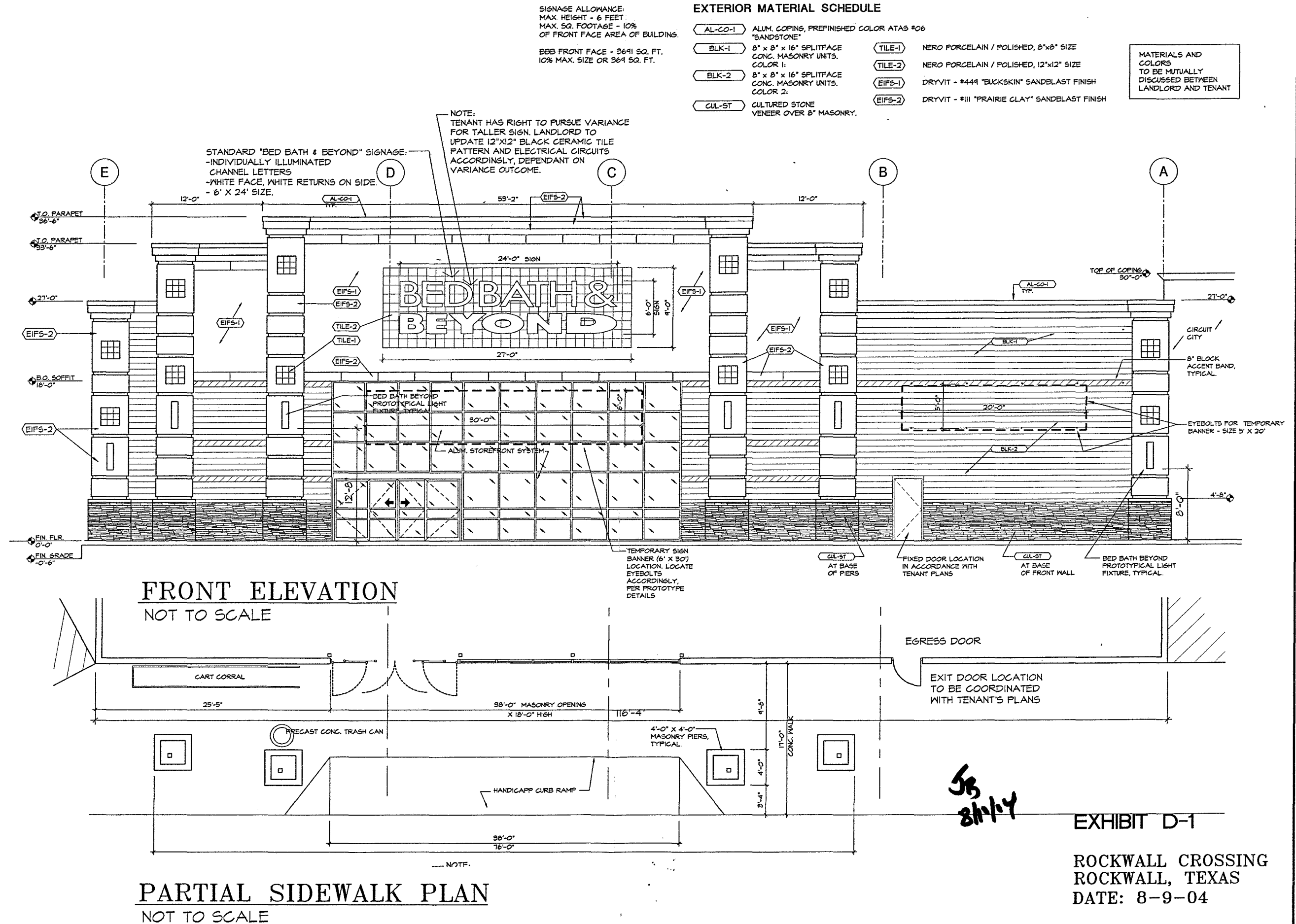
Title	Sheet No	Rev/Date
Cover Sheet	0 of 21	7/6/04
16" Water profile	1 of 21	7/6/04
File Plat	2 of 21	7/6/04
File plat	3 of 21	7/6/04
Drainage area map	4 of 21	7/6/04
Detention pond calculations	5 of 21	7/6/04
Grading plan	6 of 21	8/4/04
Storm sewer Plan	7 of 21	7/4/04
Storm sewer details	8 of 21	7/6/04
Storm sewer profile – Line A-D	9 of 21	7/6/04
Storm sewer profile – line E	9A of 21	7/6/04
Storm Calculations	10 of 21	7/6/04
Storm Calculations	10A of 21	7/6/04
Dimensional Control Plan	11 of 21	7/4/04
Site/Paving Plan	12 of 21	7/6/04
Water Main Plan	14 of 21	7/4/04
Sanitary Sewer plan	16 of 21	7/4/04
Sanitary Sewer Profile	17 of 21	7/6/04
Erosion Control Plan	18 of 21	7/6/04
Erosion Control Details	19 of 21	7/6/04
Tree Preservation Plan	20 of 21	7/6/04



1  
2  
3  
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5

Exhibit D-1

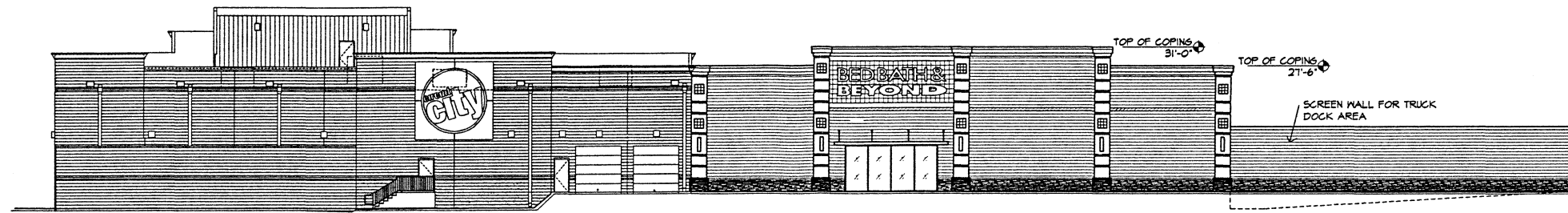
Exterior Elevations of Premises and Sidewalk Plan



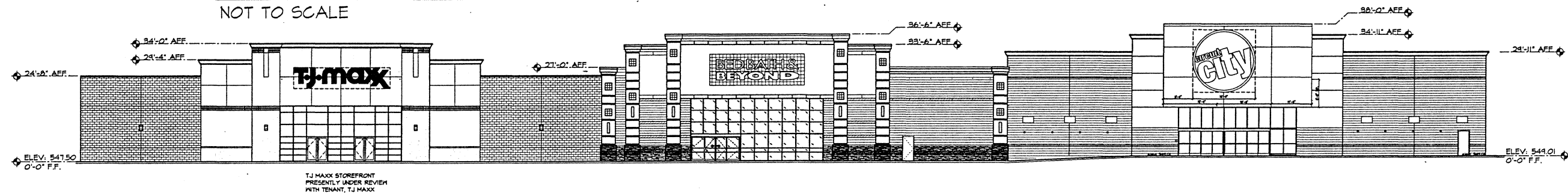
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Exhibit D-2

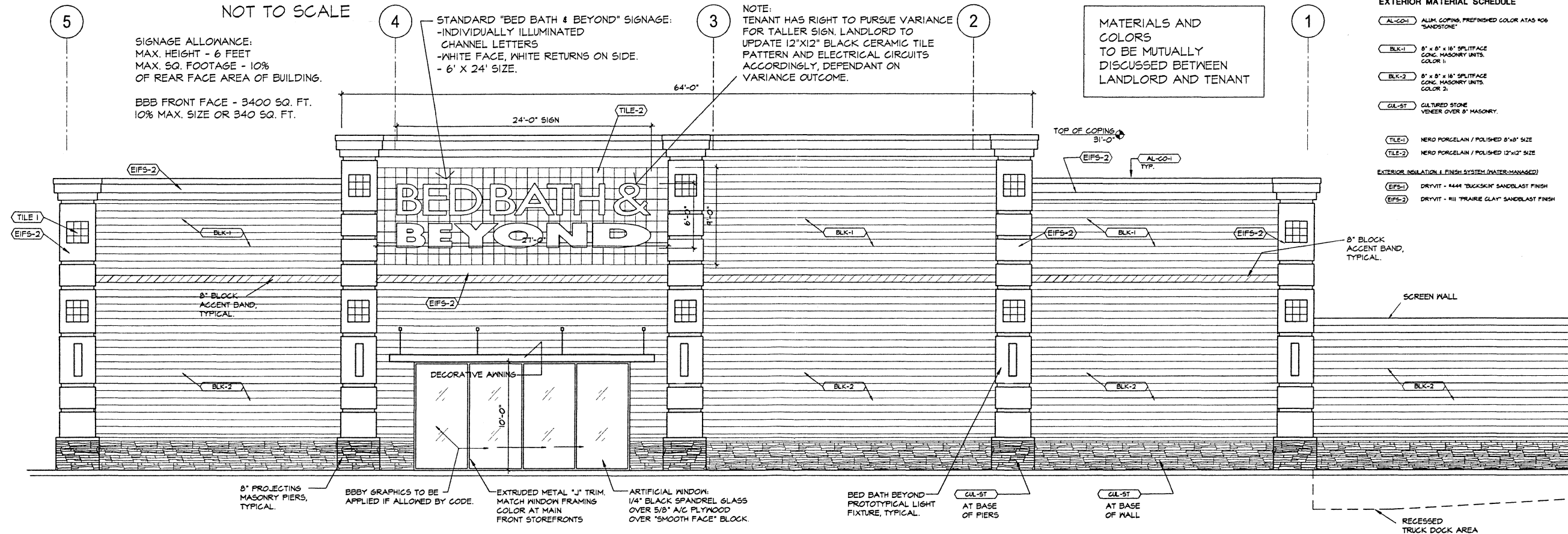
Exterior Elevations of the Shopping Center



REAR ELEVATION WITH ADJACENT TENANTS  
NOT TO SCALE



FRONT ELEVATION WITH ADJACENT TENANTS  
NOT TO SCALE



REAR ELEVATION  
NOT TO SCALE

BS  
8/11/24

EXHIBIT D-2

ROCKWALL CROSSING  
ROCKWALL, TEXAS  
DATE: 8-9-04

Exhibit E

Permitted Encumbrances

1. EASEMENT executed by Mims Williamson to RCH Water Supply Corp. dated September 26, 1961, recorded in Volume 64, page 316, DRRCT.
2. EASEMENT executed by W.C. rant to RCH Water Supply Corp. dated October 27, 1961, recorded in Volume 64, page 290, DRRCT, and as shown on survey by Douphrate & Associates, Inc., Job #0242BDY, dated 3/19/04.
3. DRAINAGE EASEMENT executed by H.L. McIntire to the State of Texas dated April 7, 1950, recorded in Volume 46, page 251, DRRCT, andas shown on survey by Douphrate & Associates, Inc., Job #0242BDY, dated 3/19/04.
4. EASEMENT AND ROW executed by Henry S. Miller Company, Trustee for Rockwall I-30 JV to TP & L Co., filed January 10, 1980, recorded in Volume 147, page 127, DRRCT, and as shown on survey by Douphrate & Associates, Inc., Job #0242BDY, dated 3/19/04.
5. EASEMENT granted to Texas Power & Light Company by instrument dated May 3, 1979, executed by Henry S. Miller Company, Trustee for Interstate 30 South-Rockwall Joint Venture, recorded in Volume 147, Page 127, Deed Records, Rockwall County, Texas.

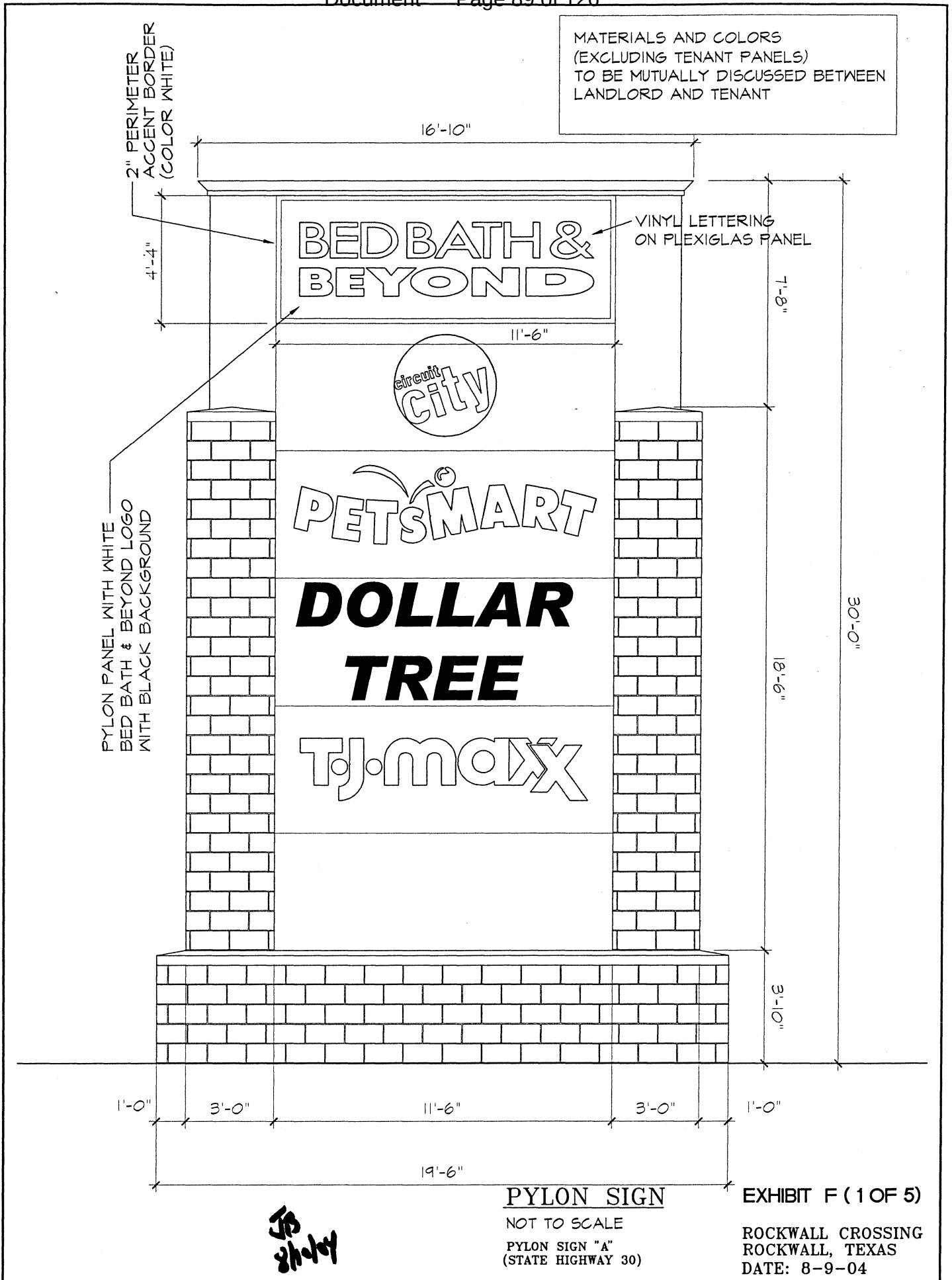
Landlord represents and warrants that (i) none of the foregoing will interfere with or prevent Tenant from operating its Premises in accordance with the terms of this Lease, (ii) conflict with any right granted Tenant under this Lease, (iii) impose on Tenant any obligation(s) in excess of those set forth in this Lease, and (iv) none of the foregoing easements or rights of way (a) are located beneath the Premises, or (b) will interfere with Tenant's use and enjoyment of the Premises.

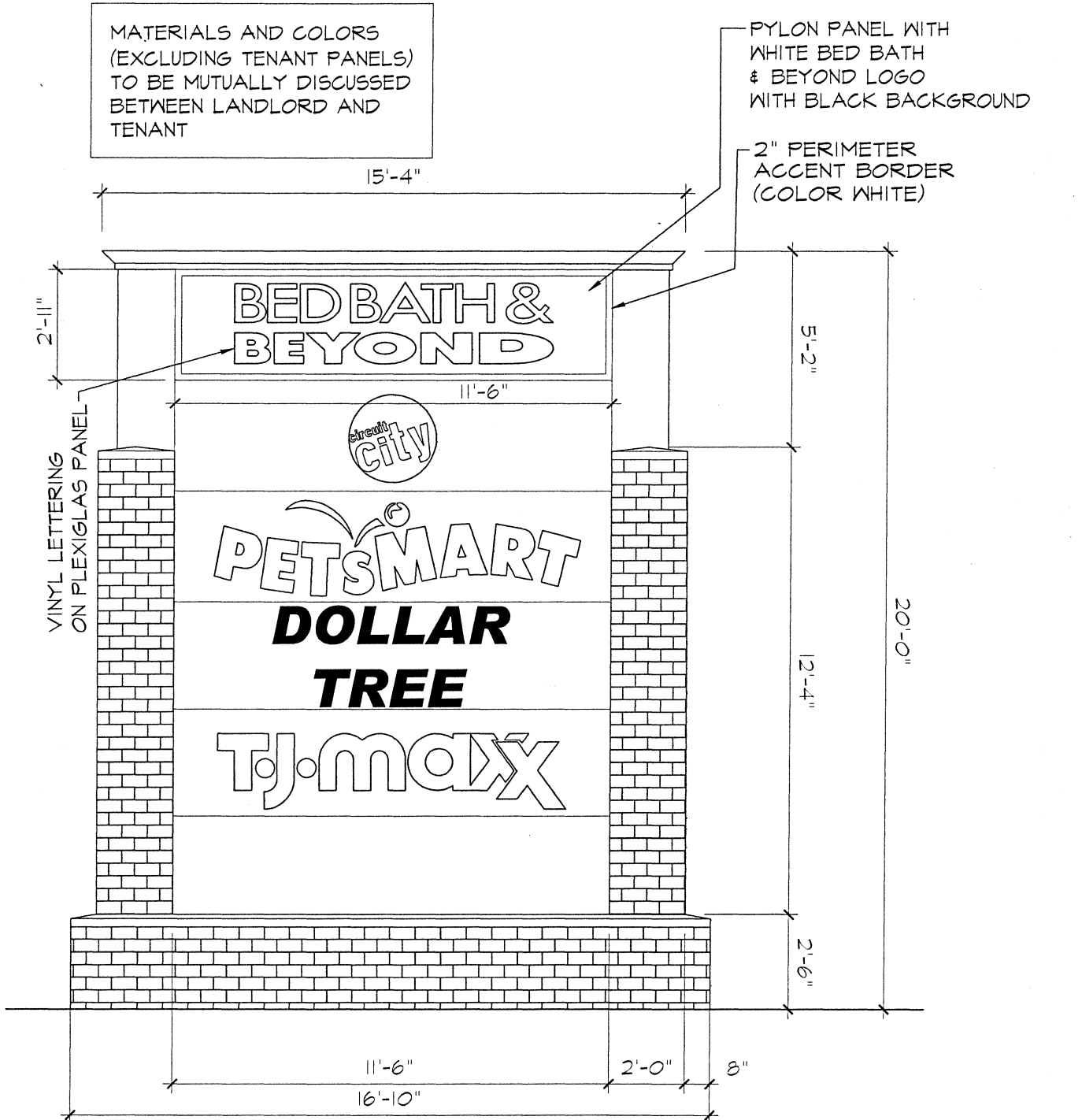
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Exhibit F

Tenant's Signage







JB  
8/4/04

# PYLON SIGN

NOT TO SCALE

PYLON SIGN "B"  
(RALPH HALL PKWY)

EXHIBIT F ( 2 OF 5)

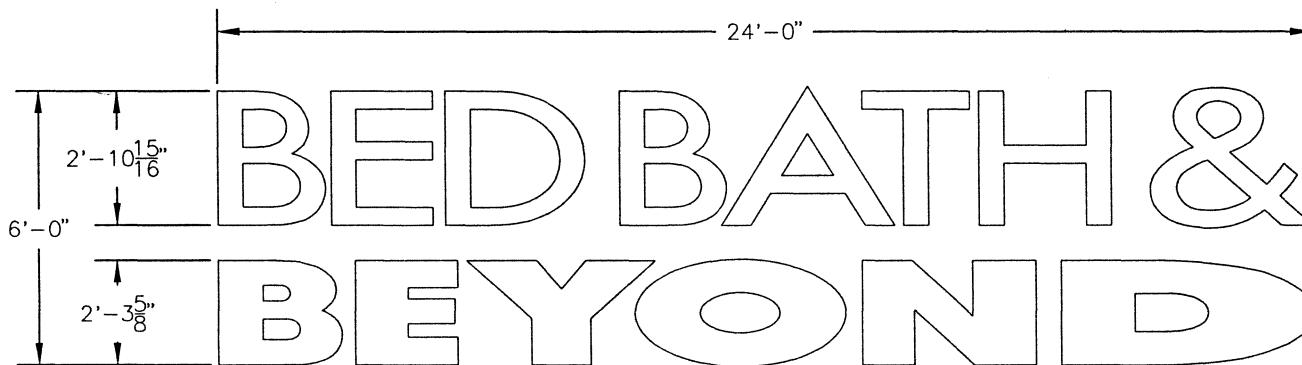
ROCKWALL CROSSING  
ROCKWALL, TEXAS  
DATE: 8-9-04

THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF COLLINS SIGNS. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF COLLINS SIGNS IS PROHIBITED.

ECR	REV	REVISIONS	DATE	BY

# BED BATH & BEYOND

ROCKWALL, TEXAS  
FRONT ELEVATION  
EXHIBIT F — SIGNAGE  
(SHEET 3 OF 5)



NOTE:  
TENANT HAS RIGHT TO PURSUE  
VARIANCE FOR TALLER SIGN. LANDLORD  
TO UPDATE 12"X12" BLACK CERAMIC  
TILE PATTERN AND ELECTRICAL CIRCUITS  
ACCORDINGLY, DEPENDANT ON  
VARIANCE OUTCOME.

## COLORS:

### FACES:

(FACE COLOR TO BE DETERMINED BY LOCATION)

3/16" 7328 WHITE PCB

### RETURNS:

#### OUTSIDE:

WHITE

#### INSIDE:

PAINT WHITE

### RETAINER:

1" TRIMCAP (COLOR TO MATCH RETURNS)

## NOTES:

MINIMUM #8 SHEET METAL SCREWS ARE TO BE USED FOR  
SECURING THE TRIM AND FACE TO THE SIGN BODY. THE  
MAXIMUM SPACING SHALL NOT EXCEED 1'-6" AND NO  
FEWER THAN (4) FOUR SCREWS ARE TO BE USED PER  
FACE. SHELLAC IS TO BE APPLIED TO EACH COPPER WIRE  
TIE TO PREVENT LOOSENING OF THE WIRE TIE.  
ALL SIGNAGE WILL BE U.L. LISTED AND CARRY U.L. LABELS.  
\*\*EQUIPMENT GROUND REQUIRED.

ACTUAL # OF CIRCUITS TO BE DETERMINED BY A LICENSED  
ELECTRICAL CONTRATOR.

## ELECTRICAL SPECS:

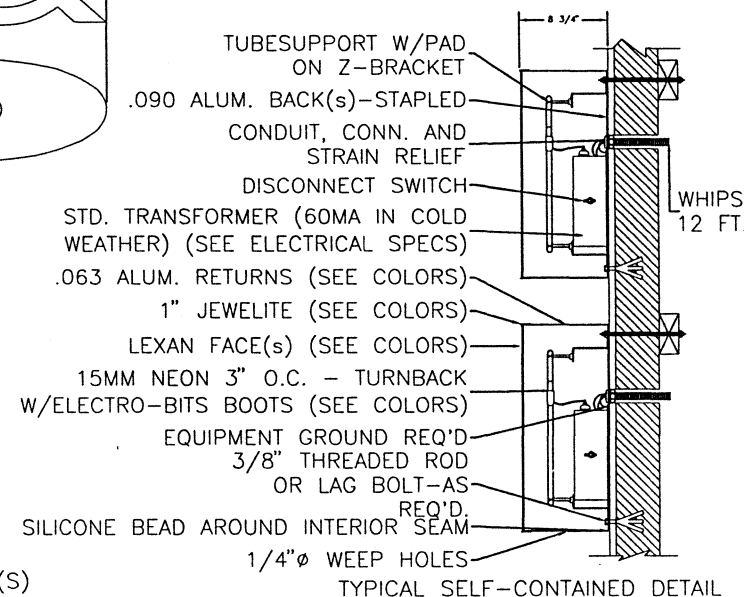
WHITE NEON / 30mA TRANSFORMER(S)

AMPS: 31.1

# OF 20 AMP CIRCUITS (RECOMMENDED): 3

VOLTS: 120

*JB*  
*8/14/23*



TYPICAL SELF-CONTAINED DETAIL

SCALE: NTS

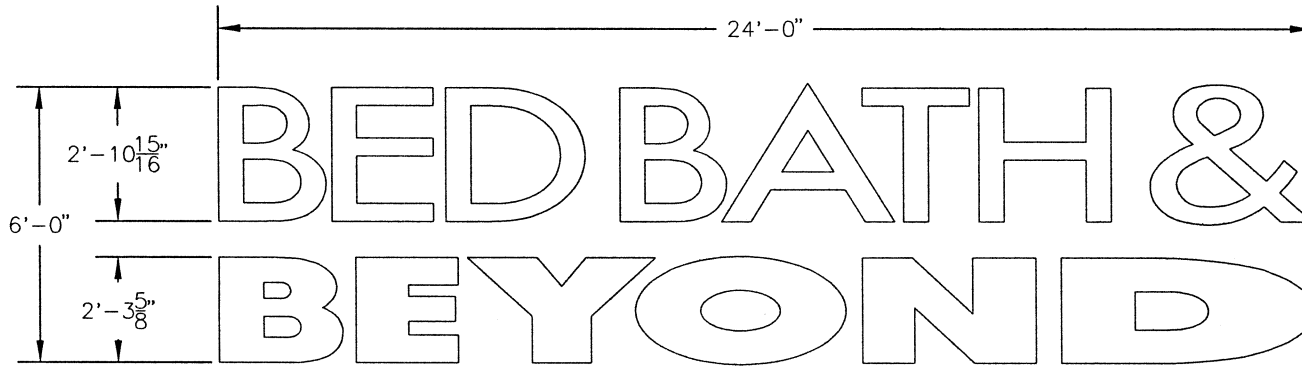
NOTES:					
ROCKWALL, TEXAS					
CUSTOMER		BED BATH & BEYOND			
CODE	PAGE LAYOUT		PRESENTATION		
ITEM DESCRIPTION					
DRAWING APPROVED BY		6'-0" X 24'-0" STACKED LAYOUT SELF-CONT. CHLL			
PROGRAM APPROVED BY		LOCATION VARIOUS		DRAWN BY CUPPLES	
PROTOTYPE	BY	SCALE 1:32	ENGINEER JOHNSON	ACCOUNT REPRESENTATIVE MURAKAMI	
1st RUN	BY	SHEET 1	BOXED 50 FT 144	ITEM NUMBER	
PRODUCTION	BY	WIND LOAD (MPH)	EST WEIGHT (LBS)	BED12201	
					REV

ITEM NUMBER  
BED12201

THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF COLLINS SIGNS. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF COLLINS SIGNS IS PROHIBITED.

ECR	REV	REVISIONS	DATE	BY

BED BATH & BEYOND  
ROCKWALL, TEXAS  
REAR ELEVATION  
EXHIBIT F - SIGNAGE  
(SHEET 4 OF 5)



NOTE:  
TENANT HAS RIGHT TO PURSUE  
VARIANCE FOR TALLER SIGN. LANDLORD  
TO UPDATE 12"X12" BLACK CERAMIC  
TILE PATTERN AND ELECTRICAL CIRCUITS  
ACCORDINGLY, DEPENDANT ON  
VARIANCE OUTCOME.

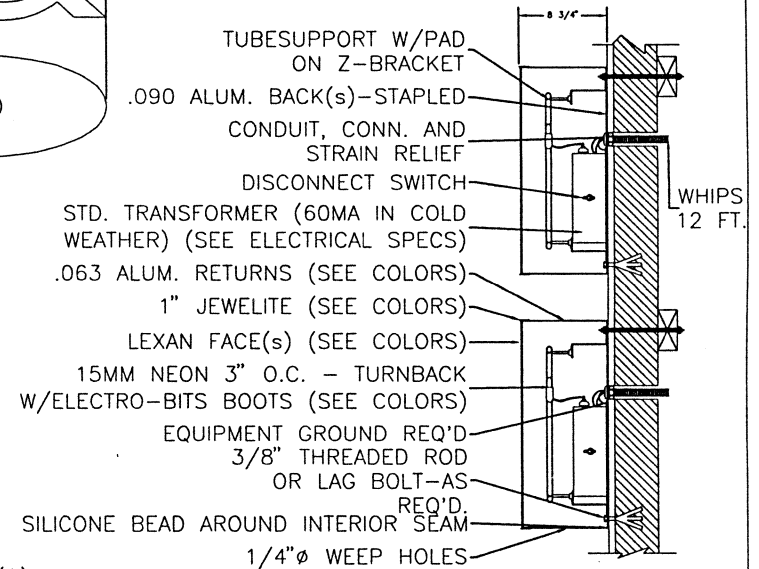
COLORS:  
FACES:  
(FACE COLOR TO BE DETERMINED BY LOCATION)  
■ 3/16" 7328 WHITE PCB  
RETURNS:  
OUTSIDE:  
■ WHITE  
INSIDE:  
■ PAINT WHITE  
RETAINER:  
1" TRIMCAP (COLOR TO MATCH RETURNS)

NOTES:  
MINIMUM #8 SHEET METAL SCREWS ARE TO BE USED FOR  
SECURING THE TRIM AND FACE TO THE SIGN BODY. THE  
MAXIMUM SPACING SHALL NOT EXCEED 1'-6" AND NO  
FEWER THAN (4) FOUR SCREWS ARE TO BE USED PER  
FACE. SHELLAC IS TO BE APPLIED TO EACH COPPER WIRE  
TIE TO PREVENT LOOSENING OF THE WIRE TIE.  
\*\*EQUIPMENT GROUND REQUIRED.  
ACTUAL # OF CIRCUITS TO BE DETERMINED BY A LICENSED  
ELECTRICAL CONTRATOR.

ELECTRICAL SPECS:

■ WHITE NEON / 30ma TRANSFORMER(S)  
AMPS: 31.1  
# OF 20 AMP CIRCUITS (RECOMMENDED): 3  
VOLTS: 120

*Handwritten:* To 11/14/4



TYPICAL SELF-CONTAINED DETAIL  
SCALE: NTS

NOTES:					
ROCKWALL, TEXAS					
CUSTOMER		BED BATH & BEYOND			
CODE	PAGE LAYOUT	PRESENTATION			
ITEM DESCRIPTION					
DRAWING APPROVED BY	6'-0" X 24'-0" STACKED LAYOUT SELF-CONT. CHLL				
PROGRAM APPROVED BY	LOCATION	DRAWN BY			
	VARIOUS	CUPPLES			
PROTOTYPE	BY	SCALE	ENGINEER	ACCOUNT REPRESENTATIVE	
		1:32	JOHNSON	MURAKAMI	
1st RUN	BY	SHEET	BOXED SQ FT	ITEM NUMBER	REV
		1	144	BED12201	-
PRODUCTION	BY	WIND LOAD (MPH)	EST WEIGHT (LBS)		
		-	-		

4' x 20'  
(VERSION 1)

(SIDE 1)

**GRAND OPENING**

(SIDE 2)

**BED BATH & BEYOND**  
**HIRING HOTLINE 1-877-JOBS-BBB**  
**COMING SOON!**

4' x 20'  
(VERSION 2)

(SIDE 1)

**NOW HIRING**

(SIDE 2)

**NOW OPEN**

TEMPORARY SIGN (BUILDING OR BBB HIRING TRAILER)

(SIDE 1)

**GRAND OPENING**

6' x 30'

(SIDE 2)

**BED BATH & BEYOND**  
**HIRING HOTLINE 1-877-JOBS-BBB**  
**COMING SOON!**

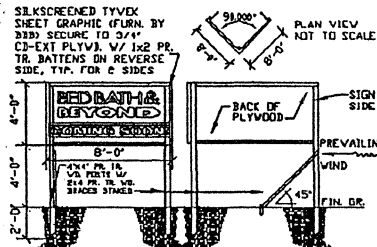
TEMPORARY BUILDING SIGN (REFER TO EXHIBIT D-1 FOR LOCATION ON BUILDING)

20'-0" 5'-0"

**why wait? shop online @**  
**www.bedbathandbeyond.com**

5' x 20'

TEMPORARY BUILDING SIGN  
(REFER TO EXHIBIT D-1 FOR LOCATION ON BUILDING)



TEMPORARY SITE SIGNAGE

(VERSION 1)

**BED BATH & BEYOND**  
**NOW OPEN**

(VERSION 2)

**BED BATH & BEYOND**  
**COMING SOON!**  
FOR HIRING INFORMATION CALL  
877-JOBS-BBB

4' x 8' - TYVEK  
(2 banners of a single  
version per box)

TEMPORARY SITE SIGNAGE

VINYL COLORS

■ PMS 187 RED  
■ BLACK

**BED BATH & BEYOND**  
**EXHIBIT F ( 5 OF 5 )**

ROCKWALL CROSSING  
ROCKWALL, TEXAS  
DATE: 8-9-04

8/17/04

Exhibit G

Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited] [general] [partnership] [national banking association], having an office at \_\_\_\_\_ (the "*Mortgagee*") and Bed Bath & Beyond Inc., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 (the "*Tenant*").

W I T N E S S E T H:

WHEREAS, Mortgagee is the holder of a mortgage (the "*Mortgage*") covering a parcel of land owned by \_\_\_\_\_, a \_\_\_\_\_ [corporation], [limited] [general] [partnership] (the "*Landlord*") together with the improvements [to be] erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "*Shopping Center*" and being more particularly described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of August \_\_\_\_, 2004 (the "*Lease*"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "*Premises*"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

**[For mortgages existing as of the date Lease is executed:** WHEREAS, as an inducement to Tenant to enter into the Lease, [Section 2.3.1/Section 17.3] thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee; and

WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage; and]

**[For mortgages occurring after the Lease is executed:** WHEREAS, Section 17.1 of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.]

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof (and such subordination shall not lessen or

1 diminish Tenant's rights under the Lease), subject, however, to the provisions of this  
2 Agreement.

3 3. Mortgagee agrees that so long as the Lease shall be in full force and effect,  
4 and so long as Tenant shall not be in default under the Lease beyond any applicable  
5 notice and grace period:

6 (a) Tenant shall not be named or joined as a party or otherwise in any  
7 suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights  
8 under the Mortgage or the bond or note or other obligation secured thereby;

9 (b) The possession by Tenant of the Premises and Tenant's rights  
10 thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term  
11 thereof be terminated or otherwise affected by (i) any suit, action or proceeding brought  
12 upon the Mortgage or the bond or note or other obligation secured thereby, or for the  
13 foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by  
14 any judicial sale or execution or other sale of the Premises or the Shopping Center, or any  
15 deed given in lieu of foreclosure, or by the exercise of any other rights given to any  
16 holder of the Mortgage or other documents as a matter of law, or (ii) any default under  
17 the Mortgage or the bond or note or other obligation secured thereby; and

18 (c) All condemnation awards and insurance proceeds paid or payable  
19 with respect to the Premises or any other part of the Shopping Center shall be applied and  
20 paid in the manner set forth in the Lease.

21 4. If Mortgagee or any future holder of the Mortgage shall become the owner  
22 of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the  
23 Shopping Center shall be sold as a result of any action or proceeding to foreclose the  
24 Mortgage, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall  
25 continue in full force and effect, without necessity for executing any new lease, as a  
26 direct lease between Tenant and the then owner of the Shopping Center, as "landlord",  
27 upon all of the same terms, covenants and provisions contained in the Lease, and in such  
28 event:

29 (a) Tenant shall be bound to such new owner under all of the terms,  
30 covenants and provisions of the Lease for the remainder of the term thereof (including the  
31 Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term)  
32 and Tenant hereby agrees to attorn to such new owner and to recognize such new owner  
33 as "landlord" under the Lease; and

34 (b) Such new owner shall be bound to Tenant under all of the terms,  
35 covenants and provisions of the Lease for the remainder of the term thereof (including the  
36 Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term)  
37 which such new owner hereby agrees to assume and perform and Tenant shall, from and  
38 after the date such new owner succeeds to the interest of "landlord" under the Lease, have  
39 the same remedies against such new owner for the breach of any covenant contained in  
40 the Lease that Tenant might have had under the Lease against Landlord if such new  
41 owner had not succeeded to the interest of "landlord"; provided, however, that such new  
42 owner shall not be:

43 (i) liable for any act or omission of any prior landlord (including  
44 Landlord) unless such act or omission continues from and after the date upon which the  
45 new owner succeeds to the interest of such prior landlord;

46 (ii) subject to any defenses which Tenant may have against any  
47 prior landlord (including Landlord) unless resulting from any default or breach by such  
48 prior landlord which continues from and after the date upon which the new owner  
49 succeeds to the interest of such prior landlord;



(iii) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any fixed rent or additional rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease; or

(v) bound by any amendment or modification of the Lease made without its consent; notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner.

(c) Tenant's obligations hereunder shall be effective only so long as Mortgagee is bound to Mortgagee's obligations hereunder.

5. Tenant will notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to terminate the Lease or abate the rent payable thereunder and agrees that notwithstanding any provision of the Lease, no notice of termination thereof nor any abatement shall be effective unless Mortgagee has received the aforesaid notice and has failed to cure the subject default within the same time period allowed Landlord under the Lease. It is understood that the abatement provisions of this Section relate to abatements by reason of Landlord's default and do not apply to provisions of the Lease whereby Tenant has the automatic right to abate rentals such as, for example, abatement upon casualty or condemnation.

6. Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

7. Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address or persons as Mortgagee may designate by notice in the manner herein set forth, or (b) if to Tenant, at the address of Tenant as hereinabove set forth, with duplicate copies to Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and Thomas J. Phillips, Esq., c/o Brown Rudnick Berlack Israels LLP, One Financial Center, Boston, Massachusetts 02111, or such other address or persons as Tenant may designate by notice in the manner herein set forth. All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

8. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors, assigns, and sublessees.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing

1 executed by the party against whom enforcement of such modification, change, waiver or  
2 cancellation is sought.

3 10. This Agreement and the covenants herein contained are intended to run  
4 with and bind all lands affected thereby.

5 NOTE: THIS AGREEMENT BY TENANT SHALL NOT BE EFFECTIVE  
6 UNLESS AND UNTIL ANY PRIOR MORTGAGES ON THIS PROPERTY HAVE  
7 BEEN SATISFIED SO THAT TENANT’S PRIOR AGREEMENTS TO ATTORN TO  
8 SAID MORTGAGES AND/OR TO SUBORDINATE ITS LEASE TO SAID  
9 MORTGAGES SHALL HAVE BEEN EXTINGUISHED.

10 IN WITNESS WHEREOF, the parties hereto have duly executed this  
11 Subordination, Non-Disturbance and Attornment Agreement as of the day and year first  
12 above written.

13

**MORTGAGEE:**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Assistant) Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Vice) President

[SEAL]

**TENANT:**

ATTEST:

BED BATH & BEYOND INC., a New  
York corporation

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Assistant) Secretary

By: \_\_\_\_\_  
Name: Warren Eisenberg  
Title: Co-Chairman of the Board of  
Directors

[SEAL]

14

[INSERT APPROPRIATE JURAT FOR MORTGAGEE]

STATE OF NEW JERSEY )  
 ) : ss.  
COUNTY OF UNION )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me personally came Warren Eisenberg to me known, who being by me duly sworn, did depose and say that he is the Co-Chairman of the Board of Directors of Bed Bath & Beyond Inc., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Exhibit H

Recognition Agreement

THIS RECOGNITION AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, a [\_\_\_\_\_] [corporation] [limited] [general] [partnership], having an address at \_\_\_\_\_ (“Landlord”); Bed Bath & Beyond Inc., a New York corporation, having an address at 650 Liberty Avenue, Union, New Jersey 07083 (“Tenant”); and \_\_\_\_\_, a [\_\_\_\_\_] [corporation] [limited] [general] [partnership], having an address at \_\_\_\_\_ (“Subtenant”).

R E C I T A L S:

A. Landlord and Tenant have entered into a certain lease (the “Lease”) dated as of August \_\_, 2004, a short form of which has been recorded in the Rockwall, Texas County Recorder’s Office, which demises certain premises (the “Premises”) located in the Rockwall Marketplace Shopping Center, Rockwall, Texas, which Shopping Center is more particularly described on Exhibit A annexed hereto and made a part hereof.

B. Section 15.5 of the Lease provides that in the event Tenant subleases all or a portion of the Premises for a term of at least five (5) years, Landlord shall, upon Tenant’s request, execute and deliver a Recognition Agreement among Landlord, Tenant and each such subtenant in the form attached to the Lease, in recordable form.

C. Pursuant to a Sublease dated as of \_\_\_\_\_ (the “Sublease”), Tenant has subleased [a portion of] the Premises to Subtenant (the “Subleased Premises”).

D. The parties hereto desire to effectuate the provisions of Section 15.5 of the Lease with respect to the Sublease and the Subleased Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Landlord warrants and represents as follows:

(a) that it is the fee owner of the Premises,

(b) that the Lease is unmodified (except as may be otherwise set forth in Exhibit B annexed hereto, if any) and is in full force and effect,

(c) that the term of the Lease expires on \_\_\_\_\_, but is subject to four renewal periods of five years each and

(d) that Tenant is not in default under the Lease nor has any event occurred which would after notice to Tenant and the passage of time become a default of Tenant under the Lease.

2. Landlord hereby acknowledges receipt of a copy of, and consents to and approves, the Sublease and all of the terms, covenants and provisions thereof, and agrees that the exercise by Subtenant of any of its rights, remedies and options contained therein shall not constitute a default under the Lease.

3. Landlord agrees that whenever it has an obligation with respect to the Premises, or its consent or approval is required for any action of Tenant under the Lease, then, to the extent such obligation, consent or approval relates to the Subleased Premises

1 or Subtenant's use and occupation thereof, it will perform such obligation in accordance  
2 with the terms and conditions of the Lease, and, subject to the applicable terms of the  
3 Lease, will not unreasonably withhold or unduly delay such consent or approval.

4 4. Landlord shall not, in the exercise of any of the rights arising or which may  
5 arise out of the Lease or of any instrument modifying or amending the same or entered  
6 into in substitution or replacement thereof (whether as a result of Tenant's default or  
7 otherwise), disturb or deprive Subtenant in or of its possession or its rights to possession  
8 of the Subleased Premises or of any right or privilege granted to or inuring to the benefit  
9 of Subtenant under the Sublease, provided that Subtenant is not in default under the  
10 Sublease beyond the expiration of any applicable notice and cure period.

11 5. In the event of the termination of the Lease by reentry, notice, conditional  
12 limitation, surrender, summary proceeding or other action or proceeding, or otherwise, or,  
13 if the Lease shall terminate or expire for any reason before any of the dates provided in  
14 the Sublease for the termination of the initial or renewal terms of the Sublease and if  
15 immediately prior to such surrender, termination or expiration the Sublease shall be in  
16 full force and effect, Subtenant shall not be made a party in any removal or eviction  
17 action or proceeding nor shall Subtenant be evicted or removed of its possession or its  
18 right of possession of the Subleased Premises be disturbed or in any way interfered with,  
19 and the Sublease shall continue in full force and effect as a direct lease between Landlord  
20 and Subtenant (provided, that in such event, Subtenant shall, for the then remainder of the  
21 term of the Sublease, pay fixed rent and additional rent in an amount equal to the greater  
22 of (x) the Fixed Rent and additional rent then payable under the Lease, prorated on the  
23 basis of the ratio which the Floor Area of the Subleased Premises bears to the Floor Area  
24 of the Premises, or (y) the fixed rent and additional rent then payable under the Sublease).

25 6. Landlord hereby waives and relinquishes any and all rights or remedies  
26 against Subtenant, pursuant to any lien, statutory or otherwise, that it may have against  
27 the property, goods or chattels of Subtenant in or on the Subleased Premises.

28 7. Any notices, consents, approvals, submissions, demands or other  
29 communications (hereinafter collectively referred to as "**Notice**") given under this  
30 Agreement shall be in writing. Unless otherwise required by law or governmental  
31 regulation, Notices shall be deemed given if sent by registered or certified mail, return  
32 receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip,  
33 postage prepaid (a) to Landlord, at the address of Landlord as hereinabove set forth or  
34 such other address or persons as Landlord may designate by Notice to the other parties  
35 hereto, (b) to Tenant, at the address of Tenant as hereinabove set forth, with duplicate  
36 copies to Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue,  
37 Union, New Jersey 07083, and Thomas J. Phillips, Esq., c/o Brown Rudnick Berlack  
38 Israels LLP, One Financial Center, Boston, Massachusetts 02111, or such other address or  
39 persons as Tenant may designate by Notice to the other parties hereto, and (c) to  
40 Subtenant, at the address of Subtenant as hereinabove set forth or such other address or  
41 persons as Subtenant may designate by Notice to the other parties hereto. During the  
42 period of any postal strike or other interference with the mails, personal delivery shall be  
43 substitute for registered or certified mail. All Notices shall become effective only on the  
44 receipt or rejection of same by the proper parties.

45 8. No modification, amendment, waiver or release of any provision of this  
46 Agreement or of any right, obligation, claim or cause of action arising hereunder shall be  
47 valid or binding for any purpose whatsoever unless in writing and duly executed by the  
48 party against whom the same is sought to be asserted.

49 [Signature Page Follows]

9. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees.

IN WITNESS WHEREOF, the parties have caused this Recognition Agreement to be executed under seal the date first above written.

**LANDLORD:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

BED BATH & BEYOND INC., a New York corporation

By: \_\_\_\_\_  
Name: Warren Eisenberg  
Title: Co-Chairman of the Board of Directors

**SUBTENANT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT APPROPRIATE JURATS FOR LANDLORD AND SUBTENANT]

STATE OF NEW JERSEY )  
 ) : ss.  
COUNTY OF UNION )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me personally came Warren Eisenberg to me known, who being by me duly sworn, did depose and say that he is the Co-Chairman of the Board of Directors of Bed Bath & Beyond Inc., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



Exhibit I

DELIVERY DATE NOTICE

[Letterhead of Landlord]

\_\_\_\_\_, 200\_\_

[via Federal Express or other  
recognized overnight delivery  
service per Article 18 of the foregoing  
lease]

Bed Bath & Beyond Inc.  
650 Liberty Avenue  
Union, NJ 07083  
Attn: Warren Eisenberg

Re: Agreement of Lease, dated August \_\_, 2004 (the "*Lease*"), between [name of  
Landlord], as landlord ("*Landlord*"), and Bed Bath & Beyond Inc., as tenant  
("*Tenant*"), with respect to certain retail premises (the "*Premises*") located in the  
Rockwall Marketplace, Rockwall, Texas

Gentlemen:

In accordance with the provisions of Subsection 2.3.2 of the Lease, the Landlord  
hereby informs the Tenant that the Delivery Date shall take place at 8:00 A.M. on  
\_\_\_\_\_, 200\_\_. This notice shall constitute the Delivery Date Notice referred to  
in Subsection 2.3.2 of the Lease.

[NAME OF LANDLORD]

By: \_\_\_\_\_  
\_\_\_\_\_, (Vice) President

cc: Thomas J. Phillips, Esq.  
Allan N. Rauch, Esq.

Exhibit J

DELIVERY DATE CERTIFICATION

[Letterhead of Landlord]

\_\_\_\_\_, 200\_\_

[via Federal Express or other  
recognized overnight delivery  
service per Article 18 of the foregoing  
lease]

Bed Bath & Beyond Inc.  
650 Liberty Avenue  
Union, NJ 07083  
Attn: Warren Eisenberg

Re: Agreement of Lease, dated August \_\_, 2004 (the "Lease"), between [name of  
Landlord], as landlord ("Landlord"), and Bed Bath & Beyond Inc., as tenant  
("Tenant"), with respect to certain retail premises (the "Premises") located in the  
Rockwall Marketplace, Rockwall, Texas

Gentlemen:

In accordance with the provisions of Subsection 2.3.3 of the Lease, Landlord  
hereby certifies to Tenant that, as of the date of this certification, all of the Delivery Date  
Conditions (as defined in the Lease) have been satisfied, and that, as a result, the Delivery  
Date (as such term is defined in the Lease) will be deemed to be \_\_\_\_\_, 200\_\_ .  
This notice shall constitute the Delivery Date Certification referred to in Subsection 2.3.3  
of the Lease.

[NAME OF LANDLORD]

By: \_\_\_\_\_  
\_\_\_\_\_, (Vice) President

cc: Thomas J. Phillips, Esq.  
Allan N. Rauch, Esq.

Exhibit K-1

Existing Exclusives

[Note: The defined terms and references to sections and paragraphs set forth in this Exhibit K-1 (except for the language in italics) shall have the meanings ascribed to same in each applicable lease.]

1. **Dollar Tree**

**Exclusive; Restricted Uses.** As a material inducement for Tenant to enter into this Lease, Landlord hereby agrees as follows:

a. Tenant shall have an exclusive for a single price point variety retail store ("Exclusive" or "Exclusive Use"). A single price point variety retail store is hereby defined as a store that offers all of its merchandise for sale at a single price point.

b. In addition, Landlord will not permit any other occupant in the Shopping Center to operate the following without Tenant's prior written consent and such consent shall be in Tenant's sole and absolute discretion:

(1) a close-out store including stores operating under the tradename Big Lots, excluding stores operating under the tradename Christmas Tree Shops;

(2) a retail store whose "principal business" (hereinafter defined) is:

a. selling variety retail merchandise at a single price point; or

b. selling artificial flowers and picture frames (individually or collectively), excluding Bed, Bath & Beyond Inc.;

(3) variety retail operations with the word "Dollar" in their trade name; or

(4) a Hallmark Gold Crown store, without the prior written consent of Tenant.

For the purpose of this Section, "principal business" shall be defined as selling such merchandise in twenty-five percent (25%) or more of the sales floor area (including one-half (1/2) of the adjacent aisle space).

Notwithstanding the foregoing, the provisions contained in this Section A.15 shall not apply to (1) any tenant or occupant selling single price point apparel as its principal business, or (2) any current occupant or tenant of the Shopping Center who is operating under their current use clause as of the date of this Lease; provided, however, in the event Landlord's consent is required for a change in permitted use, Landlord shall not consent to a change of any tenant's use which would violate subsections A.15.a or A.15.b hereinabove.

2. **PetsMart**

Tenant's Exclusive Rights. As used in the Lease, the term "Tenant's Primary Business" shall mean the retail sale of (i) pets (including but not limited to fish, birds, reptiles, dogs, cats and other small animals), (ii) food, accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, (iii) incidental services related to pets and animals, such as grooming, boarding and veterinary services, and (iv) educational products and services related to any of the foregoing, and office and storage uses incidental to the foregoing. Notwithstanding the foregoing, any veterinary, raising or boarding services provided in connection with Tenant's use shall be subject to the following restrictions: (i) such uses shall be incidental to Tenant's use; (ii) all kennels, runs and pens shall be located inside the Premises; and (iii) the combined incidental veterinary, raising and/or boarding facilities shall not occupy more than twenty percent (20%) of the floor area of the Premises. Any veterinary, raising and/or boarding facilities must have an entrance from within the Premises, although one additional, separate exterior entrance shall also be permitted. During the Term of the Lease, so long as Tenant has ceased operation at the Premises for a period of at least nine (9) months for Tenant's Primary Business, Tenant shall have the exclusive right in the Shopping Center to conduct any portion of Tenant's Primary Business described in clauses (i), (ii) and (iii) of this Paragraph 2. All other tenants or other occupants of any portion of the Shopping Center, shall be prohibited from engaging in any portion of such Primary Business described in clauses (i), (ii) and (iii) of this Paragraph 2, except on a basis which is incidental to an otherwise permitted use. For purposes of this Paragraph 2, the term "incidental" shall mean that the use occupies the lesser of (a) 1,000 square feet of Gross Floor area, or (b) five percent (5%) of the sales area in the subject premises. In addition to the foregoing, Tenant's exclusive use set forth above shall not be applicable to: (i) any supermarket or grocery store occupying in excess of twenty-five thousand (25,000) square feet of Gross Floor Area; and (ii) a full-line department store such as Target, Wal-Mart or Kohl's. (Exhibit G).

Prohibited Uses. The following uses (collectively referred to as "Prohibited Uses" and individually as a "Prohibited Use") are prohibited during the Term of the Lease in any portion of the Shopping Center: nuisance; any use causing loud noises or offensive odors (including any business using exterior loud speakers); manufacturing facility; dry cleaner (except facilities for drop off and pick up of clothing cleaned at another location); any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles; automobile repair shop or service station (other than a typical National Tire Warehouse or other national or regional type tenant located on an Outparcel), or any facility storing or selling gasoline or diesel fuel in or from tanks; used clothing or thrift store or liquidation outlet (but expressly not prohibiting the operation of no more than two (2) upscale consignment shops, such as, by way of example, a store specializing in branded ladies apparel, or a bookstore), not to exceed fifteen thousand (15,000) square feet of Gross Floor Area; massage parlor; adult book shop or adult movie house; mortuary or funeral parlor; coin operated laundry; cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant permitted hereunder; night club; cinema or theater; place of recreation (including but not limited to bowling alley, skating rink, carnival, game arcade or health spa (provided, however, a health spa of less than two thousand five hundred (2,500) square feet of Gross Floor Area may be located in the Shopping Center); church; or any other use inconsistent with the operation of a high quality retail shopping center. In addition, the following uses must first be reasonably approved in writing by Tenant within thirty (30) days of receiving written notice of request thereof from Landlord: drive-throughs; children's recreational, educational or day-care facility; restaurants occupying more than three thousand (3,000) square feet of Gross Floor Area located within two hundred fifty (250) feet of the Premises, not to exceed six thousand (6,000) square feet of Gross Floor Area in the aggregate within such two hundred fifty (250) feet radius; offices (except incidental to a retail use or as otherwise provided herein);

professional uses, provided, however, the following shall not preclude any hair salon, beauty salon, dental offices, eye care offices any similar uses typically found in first-class regional shopping centers, provided (i) no such uses shall be within two hundred fifty (250) feet of the Premises, and (ii) the aggregate Gross Floor Area of such uses shall not exceed fifteen thousand (15,000) square feet; and schools of any nature except in conjunction with animal training or obedience training classes associated with Tenant's Primary Business. As used herein, "school" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers. It is the intent of this Section that the Shopping Center shall be devoted to high quality retail uses and that the parking and the other common facilities shall not be burdened by either excessive or protracted use.

### 3. Circuit City

So long as the Premises are used for the initial uses as set forth hereinbelow and this lease is in full force and effect, no other tenant or occupant of the Shopping Center shall be entitled to sell or rent (or rent to own) any of the Products, subject only to (i) rights granted to Bed, Bath & Beyond pursuant to a separate written agreement executed by and between Tenant and Bed, Bath & Beyond and (ii) exclusive rights of tenants or occupants of the Shopping Center under leases or occupancy agreements in existence prior to this Lease, as set forth in Exhibit "F"; provided, however, this provision shall not be deemed to prohibit sales of the Products by any nationally recognized department stores such as Kohl's, J.C. Penney, Nordstrom, Hechts, Dillard's or Foley's, so long as any such department store is open and operating such department store on a full-line basis within the Shopping Center. Incidental Sale (as hereinafter defined) of the Products in connection with the overall business of another occupant or tenant shall not be deemed a violation of the preceding sentence. As used herein, "Incidental Sale: shall mean the lesser of (i) two hundred (200) square feet, or (ii) ten percent (10%) of such occupant's or tenant's display area.

Use. Tenant shall initially use and operate the Premises as a "Circuit City" retail store for (i) the sale of consumer, office and automotive electronics products (which include, but shall not be limited to, televisions, stereos, speakers, video and audio recorders and players and cameras), computer hardware and software and related software services, including internet access services, entertainment software and entertainment media (which include, but shall not be limited to, records, game cartridges, video tapes, cassettes, compact discs, DVD's and DVD equipment), cellular and wireless telephones and telecommunication devices, and related goods and the sale and installation of motor vehicle audio, stereo and telephone systems and technological evolutions of the foregoing (all of such items are collectively referred to as the "Products"), and (ii) renting, servicing, repairing and warehousing of the Products.

***The foregoing restriction regarding Circuit City is subject to that certain letter agreement dated March 31, 2004 between Circuit City Stores, Inc. and Bed Bath & Beyond Inc., a copy of which is attached hereto.***

Prohibited Activities. During the Term of this Lease, Landlord shall not operate or lease (or permit to be operated or leased) any building or tenant space in the Shopping Center and Tenant shall not operate in the Premises for use as:

- (A) a bar, pub, nightclub, music hall or disco in which less than fifty percent (50%) of its space or revenue is devoted to and derived from food service;
- (B) a bowling alley;
- (C) a billiard or bingo parlor;
- (D) a flea market;
- (E) a massage parlor;
- (F) a funeral home;

- (G) a facility for the sale of paraphernalia for use with illicit drugs;
- (H) a facility for the sale or display of pornographic material (as determined by community standards for the area in which the Shopping Center is located), excluding such uses as are typical of a first-class bookstore such as Barnes & Noble or Borders;
- (I) an off-track betting parlor;
- (J) a carnival, amusement park or circus;
- (K) a gas station, car wash or auto repair or body shop (the parties specifically acknowledging that Tenant's car stereo installation facility is not included in this prohibition);
- (L) a facility for the sale of new or used motor vehicles, trailers or mobile homes;
- (M) a facility for any use which is illegal or dangerous, constitutes a nuisance or is inconsistent with an integrated, community-oriented retail and commercial shopping center;
- (N) a skating rink;
- (O) an arcade, pinball or computer game room (provided that retail facilities in the Shopping Center may operate no more than four (4) such electronic games incidentally to their primary operations);
- (P) service-oriented offices (such as, by way of example, medical or employment offices, travel agencies, real estate agencies or dry cleaning establishments) or other non-retail uses, except for (i) offices and storage facilities incidental to a primary retail operation, and (ii) service-oriented offices in more than an aggregate of 20,000 square feet of gross leasable area within the Shopping Center;
- (Q) a banquet hall, auditorium or other place of public assembly;
- (R) a training or educational facility (including, without limitation, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers);
- (S) a theater of any kind;
- (T) a facility for the sale or rental of used goods (including thrift shops, secondhand or consignment stores) or any facility selling new or used merchandise as a wholesale operation, a liquidation operation, odd lots, lot sales, factory close-outs or imperfect goods; or
- (U) a gymnasium, sport or health club or spa, excluding a "day spa" (such as, by way of example, "Curves") not to exceed 4,000 square feet of gross leasable area within the Shopping Center.

In addition to the foregoing, Landlord shall not operate, lease or permit to be operated or leased (a) any restaurant or (b) any bookstore larger than 20,000 square feet of gross leasable area, within any building which abuts the Building. In addition, no auction, fire or going-out-of-business sale shall be conducted in the Shopping Center, unless pursuant to a court order.

#### **4. TJ Maxx**

Landlord agrees that, from the date hereof until expiration of the term of this lease, no other premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of apparel and related accessories (the foregoing hereinafter referred to as a "Competing Use" and the merchandise referred to therein as the "Protected Merchandise"). The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise.

Landlord agrees that as long as any retail sales activity shall be conducted in the Demised Premises the Shopping Center shall not be used (a) for any non-retail purposes (repairs,

1 alterations and offices incidental to retailing, and banks and small loan offices, not being  
2 deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating  
3 rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club,  
4 massage parlor, sporting event, sports or game facility, off-track betting club (c) or for  
5 any establishment which sells or displays pornographic materials (provided, however, the  
6 sale of materials which persons may consider to be pornographic shall be permitted  
7 incident to a general bookstore operating such as Borders Books\*Music\*Café, provided;  
8 however, that nothing herein shall alter the obligation of every occupant to conduct its  
9 business in a manner consistent with the operation of a first class retail shopping center)  
10 or (d) for any establishment which sells or displays used merchandise or second hand  
11 goods. For purposes of this Section, the sale of pornographic materials shall be  
12 considered incidental to such business' primary use for so long as not more than two  
13 percent (2%) of its gross sales are attributable to the sale of such items. No restaurants or  
14 establishments selling food prepared on premises for consumption on or off premises  
15 shall be located in the Shopping Center outside of the area labeled "Permitted Restaurant  
16 Area" (OUTPARCELS) on the Lease Plan may have a cafe containing up to two  
17 thousand five hundred (2,500) feet of ground floor area within their premises, provided  
18 that any such cafe is ancillary to a primary retail purpose.

19  
20 *The foregoing restriction regarding TJ Maxx is subject to the provisions of*  
21 *Section 13.3.1 of this Lease, including any Coexistence Agreement entered into*  
22 *as contemplated by said Section 13.3.1.*  
23  
24  
25





Circuit City Stores, Inc.  
9950 Mayland Drive  
Richmond, VA 23233-1464

March 31, 2004

Katherine Sloss, Esq.  
Bed Bath & Beyond Inc.  
650 Liberty Avenue  
Union, New Jersey 07083

Re: Agreement Regarding Exclusive Uses between Circuit City Stores, Inc., a Virginia corporation ("CC") and Bed Bath & Beyond Inc., a New York corporation ("BBB") - Rockwall Marketplace, Rockwall, TX (the "Shopping Center")

Ladies and Gentlemen:

In order to facilitate the operation of retail stores by each of CC and BBB in the Shopping Center, this letter sets forth the agreement of CC and BBB with respect to the exclusive uses established in their respective leases in the Shopping Center (hereafter referred to as the "CC Lease" and the "BBB Lease", respectively).

#### DEFINITIONS

A. BBB Store: The store demised to BBB under the BBB Lease, containing a retail sales area of at least 10,000 square feet, which is operated primarily for the sale of home products and furnishings by (i) BBB, or (ii) any Successor.

B. BBB Exclusive Use: The retail sale of any of the following goods (such items are collectively referred to as the "BBB Exclusive Products"): (i) linens and domestics (including but not limited to sheets, bedspreads, comforters, duvets, pillows, pillow covers, placements, tablecloths, dish towels, oven mittens and aprons); (ii) bathroom items (including but not limited to towels, shower curtains, bathroom rugs, toilet seats and other bathroom accessories); (iii) housewares (including but not limited to utensils, kitchen utensils, countertop kitchen and bathroom appliances, kitchen and bathroom "gadgets," small cleaning appliances [including but not limited to irons and hand held cleaning machines] and supplies, cookware, bakeware, dishes and china); (iv) frames and wall art; (v) window treatments; and/or (vi) closet, shelving and storage items.

C. CC Store: The store demised to CC under the CC Lease, containing a retail sales area of at least 10,000 square feet, which is operated primarily for the sale of consumer, office and/or automotive electronics by (i) CC, or (ii) any Successor.

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D. CC Exclusive Use: The retail sale of any of the following goods and services (i) consumer, office and automotive electronics products (which include, but shall not be limited to, televisions, stereos, speakers, video and audio recorders and players and cameras), computer hardware and software and related software services, including internet access services, entertainment software and entertainment media (which include, but shall not be limited to, records, game cartridges, video tapes, cassettes, compact discs, DVD's and DVD equipment), cellular and wireless telephones and telecommunication devices, and related goods and the sale and installation of motor vehicle audio, stereo and telephone systems and technological evolutions of the foregoing (all of such items are collectively referred to as the "CC Exclusive Products"), and (ii) renting, servicing, repairing and warehousing of the CC Exclusive Products.

E. Successor(s): Any entity which is controlling, controlled by or under common control with CC or BBB, as applicable, or any assignees, sublessees, licensees, concessionaires, tenants, purchasers or other successor(s) in interest.

F. Excused Periods: Periods during which: (a) material alterations or renovations are being performed in and to a party's Store for a period not in excess of 365 days, (b) a party's Store is being restored with reasonable efforts following damage, destruction, or taking in eminent domain, or (c) an event of *force majeure* prevents the operation of business within a Party's Store.

## AGREEMENT

For and in consideration of the mutual covenants set forth herein, CC and BBB agree as follows:

1. Notwithstanding any provision(s) to the contrary in the BBB Lease or the CC Lease, BBB agrees to recognize and not violate the CC Exclusive Use in the Shopping Center, provided, however, that (i) the following categories of goods shall not be deemed to be CC Exclusive Products: (a) consumer electronic products involving personal care (such as hair dryers); (b) small electronic kitchen appliances and devices (such as microwave ovens, toasters, coffee makers); (c) electronic bedroom appliances and devices (such as alarm or clock radios); (d) electronic home maintenance devices (such as vacuum cleaners); and (e) electronic entertainment software and media that is specifically related to cooking, home decorating, home repairs, and/or home building; and (ii) BBB and its Successors shall be permitted to use up to (but not more than) 400 square feet of floor area in the BBB Store for the sale of any of the CC Exclusive Products except cellular telephones, provided, however, that in the event that BBB subsequently sells cellular telephones in at least seventy-five percent (75%) of its stores in the United States, then BBB shall be permitted to use up to (but not more than) fifty (50) square feet of the square footage that it occupies within the BBB Store for the sale of cellular telephones. The exclusive rights with respect to any particular category listed in the CC Exclusive Use shall terminate as to such category in the event that the CC Store ceases to be used for the sale, rental or distribution of items contained in such category for in excess of twelve (12) consecutive months (except for Excused Periods). Notwithstanding the foregoing, the CC Exclusive Use shall lapse in its entirety with respect to a non-affiliated assignee of the CC Lease or a non-affiliated sublessee of all or a portion of the CC Store, if that assignee or sublessee fails to use at

March 31, 2004

Page 3

least fifty percent (50%) of the square footage that it occupies within the CC Store for the sale, rental or distribution of the CC Exclusive Products, singly or in any combination, for in excess of twelve (12) consecutive months, except for Excused Periods.

2. Notwithstanding any provision(s) to the contrary in the BBB Lease or the CC Lease, CC agrees to recognize and not violate the BBB Exclusive Use in the Shopping Center, provided, however, that (i) CC and its Successors shall be permitted to use up to (but not more than) 450 square feet of floor area in the CC Store for the sale of the BBB Exclusive Products. The exclusive rights with respect to any particular category listed in the BBB Exclusive Use shall terminate as to such category in the event that the BBB Store ceases to be used for the sale, rental or distribution of items contained in such category for in excess of twelve (12) consecutive months (except for Excused Periods). Notwithstanding the foregoing, the BBB Exclusive Use shall lapse in its entirety with respect to a non-affiliated assignee of the BBB Lease or a non-affiliated sublessee of all or a portion of the BBB Store, if that assignee or sublessee fails to use at least fifty percent (50%) of the square footage that it occupies within the BBB Store for the sale, rental or distribution of the BBB Exclusive Products, singly or in any combination, for in excess of twelve (12) consecutive months, except for Excused Periods.

3. Subject to each party's compliance with the terms of this letter agreement, CC and BBB each agree not to object to the development, proposed development, operation or proposed operation of a BBB Store, or a CC Store, as applicable, in the Shopping Center.

4. Although not required as a condition to the enforceability of the terms and provisions of this letter agreement, CC and BBB shall, upon the request of the other, execute any document reasonably required by the other to evidence the existence or applicability of the terms and provisions of this letter agreement.

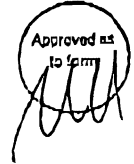
5. The foregoing constitutes the final agreement between CC and BBB with respect to the Shopping Center, and supersedes all prior understandings, writings and agreements between the parties with respect to the BBB Exclusive Use and the CC Exclusive Use in the Shopping Center. The provisions of this letter agreement shall be binding on any and all Successors of CC and BBB. The Landlord in the CC Lease and the BBB Lease shall be entitled to rely on the terms and conditions set forth in this agreement only as between CC and BBB (and their respective Successors), and not with respect to other tenants or occupants of the Shopping Center (as to which the "exclusive use" provisions contained in the CC Lease and the BBB Lease shall apply in accordance with the terms of said Leases).

If the foregoing accurately reflects your understanding, please sign below indicating your agreement, and return the executed counterpart to my attention at the above address. It shall be a condition precedent to the agreements herein set forth that BBB and CC shall each have entered into a lease or occupancy agreement for its premises in the Shopping Center within one year after the date hereof.

March 31, 2004  
Page 4

Very truly yours,

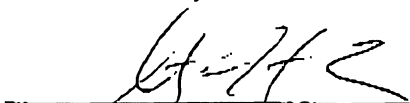
By: Thomas C. Nolan  
Thomas C. Nolan  
Vice-President Real Estate



MM/kj

ACCEPTED AND AGREED TO  
THIS 6th DAY OF April, 2004:

BED BATH & BEYOND, INC.

Steven H. Temares   
Name: Steven H. Temares  
Title: President - Chief Executive Officer

1		
2		<u>Exhibit K-2</u>
3		<u>Existing Leases</u>
4		
5		
6	<u>Tenant</u>	<u>Date of Lease</u>
7		
8	Circuit City	June 11, 2004
9	Dollar Tree	June 25, 2004
10	PETsMART	June 25, 2004
11	Sports Clips	January 21, 2004
12		

1 Exhibit L

2 Intentionally Omitted

Exhibit M

Prohibited Uses

As used in this Lease, the term “***Prohibited Uses***” shall mean any of the following uses:

A. As to the Shopping Center and to any Related Land located inside of the area formed by the intersections of Mims Road, the I-30 Eastbound Frontage Road and Ralph Hall Parkway, any of the following uses:

1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.

2. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;

3. Any “second hand” store or “surplus” store, excluding (a) a nationally or regionally recognized used sporting goods store of the type found in first class shopping centers (such as Play it Again Sports) and containing not more than 10,000 square feet of Floor Area, (b) a Half Price Books store containing not more than 12,000 square feet of Floor Area, and (c) nationally or regionally recognized used maternity clothing stores of the type found in first class shopping centers and containing not more than 2,500 square feet of Floor Area for any and all such maternity stores in the aggregate;

4. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

5. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);

6. Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;

7. Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted, so long as its on-site premises are located more than 150 feet away from the Premises);

8. Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation, excluding Boaters World so long as the same is located on an Outparcel and does not display any boats outdoors;

9. Any bowling alley or skating rink;

10. Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;

11. Any living quarters, sleeping apartments, or lodging rooms;

12. Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);

13. Any mortuary or funeral home;

14. Any “Pornographic Use”, which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not

1 primarily scientific or educational [provided, however, that the sale of books, magazines  
2 and other publications by a national bookstore of the type normally located in first-class  
3 shopping centers in the State in which the Shopping Center is located (such as, for  
4 example, Borders and Barnes & Noble, as said stores currently operate) shall not be  
5 deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or  
6 rental video cassettes or other medium capable of projecting, transmitting or reproducing,  
7 independently or in conjunction with another device, machine or equipment, an image or  
8 series of images, the content of which has been rated or advertised generally as NC-17 or  
9 "X" or unrated by the Motion Picture Rating Association, or any successor thereto  
10 [provided, however, that the sale or rental of such videos by a national video store of the  
11 type normally located in first-class shopping centers in the State in which the Shopping  
12 Center is located (such as, for example, Blockbuster or West Coast Video, as said stores  
13 currently operate) shall not be deemed a "pornographic use" hereunder]; or massage  
14 parlor [except for therapeutic massages given in connection with the operation of a day  
15 spa or health club which may otherwise be permitted under this Exhibit M];

16 15. Any so-called "head shop", or other establishment primarily selling or  
17 exhibiting drug-related paraphernalia;

18 16. Any bar, tavern, or other establishment selling alcoholic beverages for on-  
19 or off-premises consumption, excluding one (1) "liquor store" selling alcoholic beverages  
20 for off-premises consumption, of the type found in first class shopping centers, occupying  
21 not more than 1,500 square feet of Floor Area and located at least 200 feet from the  
22 Premises, and provided that the foregoing shall not restrict the on-premises consumption  
23 of alcoholic beverages as incidental to a restaurant use specifically permitted pursuant to  
24 clause 35(b) below;

25 17. Any catering or banquet hall;

26 18. Any flea market, amusement or video arcade, pool or billiard hall, night  
27 club, discotheque, or dance hall;

28 19. Any training or education facility, including but not limited to: beauty  
29 schools, barber colleges, reading rooms, places of instruction or other operations catering  
30 primarily to students or trainees rather than to customers; provided, however, this  
31 prohibition shall not be applicable to on-site employee training by an Occupant incidental  
32 to the conduct of its business at the Shopping Center;

33 20. Any gambling facility or operation, including but not limited to: off-track  
34 or sports betting parlor; table games such as black-jack or poker; slot machines; video  
35 poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the  
36 foregoing, this prohibition shall not apply to governmental sponsored gambling activities,  
37 or charitable gambling activities, so long as such governmental and/or charitable  
38 activities are incidental to the business operation being conducted by the Occupant;

39 21. Any unlawful use;

40 22. Any pawn shop, gun shop, or tattoo parlor, except that incidental sales of  
41 guns may occur at a full-line sporting goods store that is also a Recognized Tenant [such  
42 as an Academy Sports or Gart as such stores are presently operated];

43 23. Any church or other place of religious worship;

44 24. Any car wash, automobile repair shop, or any business servicing motor  
45 vehicles in any respect, including, without limitation, any quick lube oil change service,  
46 tire center or gasoline or service station or facility

47 25. Any carnival, amusement park or circus;



1           26. Any medical clinics or medical offices, except that optician/optometrist  
2 offices and dental offices, of not more than 5,000 square feet of Floor Area each and  
3 10,000 square feet of Floor Area in the aggregate, may be located not closer than 250 feet  
4 from the Premises;

5           27. Any supermarket, except that an upscale, boutique-type food store of the  
6 type normally operated in the Dallas/Fort Worth, Texas metropolitan area (such as, by  
7 way of example, Zagara's, Whole Foods, Fresh Fields, or Wild Oats), provided, that such  
8 store shall not occupy more than 27,000 square feet of Floor Area, and shall be located at  
9 least 200 feet away from the Premises (except that an upscale, boutique-type food store  
10 shall be permitted to be located within the Premises) and except that a supermarket may  
11 be allowed in any expanded area of the Shopping Center located to the east of its present  
12 configuration;

13           28. Any office use, other than: (a) office space used in connection with and  
14 ancillary to a permitted retail use hereunder, (b) offices specifically allowed under clause  
15 26 above, (c) a bank not exceeding 6,000 square feet of Floor Area located on an  
16 Outparcel; and (d) retail offices providing services commonly found in similar first-class  
17 shopping centers in the Dallas/Fort Worth, Texas metropolitan area (for example,  
18 financial services, real estate brokerage, insurance agency, banking, travel agency),  
19 provided that such uses under this clause (d) are located at least 150 feet away from the  
20 Premises, and not more than 7,500 square feet of Floor Area in the Shopping Center, in  
21 the aggregate, shall be devoted to such uses;

22           29. hotel/motel;

23           30. daycare center;

24           31. veterinary office, except (i) a typical "PETsMART" as shown on Exhibit B  
25 and (ii) as may be incidental to a full-line pet and pet supply store operating in at least  
26 15,000 square feet of Floor Area and located at least 200 feet away from the Premises  
27 (except that a full-line pet and pet supply store shall be permitted to be located within the  
28 Premises), subject to the provisions of Section 13.3 of this Lease with respect to Existing  
29 Exclusives; such occupant shall use reasonable efforts to prevent its customers from  
30 allowing their pets to urinate or defecate in the Common Areas and will promptly remove  
31 any "dog dirt" from the Common Areas;

32           32. children's entertainment or activity facility (such as "Discovery Zone", or  
33 "Chuck E. Cheese's"), unless located on an Outparcel;

34           33. karate center;

35           34. movie theater;

36           35. restaurant serving meals for on- or off-premises consumption, except for (a)  
37 not more than two (2) so-called "take out" or "fast food" establishments, occupying not  
38 more than a total of 10,000 square feet of Floor Area and each located at least 150 feet  
39 from the Premises and (b) a nationally or regionally recognized family-oriented, sit-down  
40 restaurant typically operating in a first class shopping center [such as TGI Fridays, Red  
41 Lobster, Olive Garden and Bennigans, as such restaurants are presently operated (it being  
42 acknowledged that the foregoing are included as examples (and not limitations) of  
43 nationally or regionally recognized family-oriented, sit-down restaurants typically  
44 operating in a first class shopping center)], provided that all such restaurants shall be  
45 located at least 150 feet from the Premises;

46           36. beauty parlor or nail salon within 200 feet of the Premises; or

1 37. health spa, exercise facility or similar type business, excluding a typical  
2 “day spa” occupying not more than 8,000 square feet of Floor Area located at least 150  
3 feet from the Premises.

4 B. As to any Related Land not covered by the preceding Section A of this Exhibit M,  
5 any of the uses listed in Items 1, 2, 4, 5, 14, 15, 21, 22, and 25 above.

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**AMENDMENT TO LEASE**

THIS AMENDMENT TO LEASE AGREEMENT ("AGREEMENT"), made this 16 day of August, 2009, between **ROCKWALL CROSSING, LTD.**, a Texas limited partnership ("Landlord") and **BED BATH & BEYOND INC.**, a New York corporation ("Tenant"),

**WITNESSETH:**

**WHEREAS**, Landlord and Tenant are parties to a lease agreement dated September 3rd, 2004, as amended by that certain letter agreement dated March 30th, 2005 (collectively hereinafter referred to as the "Lease"), for a retail premises (the "Leased Premises") located within Rockwall Crossing (the "Shopping Center"), formerly referred to as Rockwall Marketplace;

**WHEREAS**, the Lease has various limitations associated with restaurants in the Shopping Center;

**WHEREAS**, in addition to the restaurants allowed by the Lease, Tenant has approved the operation of a "Chipotle" restaurant and "La Madeleine" restaurant (collectively referred to as the "Tenant Approved Restaurants") at the Shopping Center;

**WHEREAS**, the parties hereto desire to amend the Lease to modify the restrictions on restaurant types and allow additional restaurants at the Shopping Center in addition to the Tenant Approved Restaurants.

**NOW, THEREFORE**, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, Landlord and Tenant agree to amend the Lease as follows. This Agreement shall be upon the same terms and conditions provided in the Lease, except as the same are hereby modified and supplemented. Wherever there is any conflict between this Agreement and the Lease, the provisions of this Agreement are paramount and the Lease shall be construed accordingly.

1. The text in Line 24 of Page 2 of Exhibit M of the Lease is hereby deleted and the following inserted therein: "clause 35 below;"
2. The text in Lines 37 and 38 of Page 3 of Exhibit M of the Lease is hereby deleted and the following inserted therein: "not more than three (3) restaurants occupying not more than a total of 13,000 square feet of Floor Area and each located at least 150 feet".
3. Landlord and Tenant each acknowledge and understand that the Tenant Approved Restaurants are in addition to the restaurants that are permitted at the Shopping Center by the Lease and the amendments thereto as set forth in Section 1 and 2 of this Agreement.
4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
5. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

EXCEPT AS HEREIN extended, modified, supplemented or amended, all of the terms, covenants and conditions of the Lease shall remain in full force and effect as heretofore written, and the Lease as extended, modified, supplemented or amended by this Agreement is hereby ratified and confirmed in every respect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date stated hereinabove.

LANDLORD:

**ROCKWALL CROSSING, LTD.,** a Texas limited partnership

By: WOODMONT ROCKWALL GP, L.L.C.,  
a Texas limited liability company, its General Partner

By: Stephen Coslik  
BCC Stephen Coslik, Managing Member

TENANT:

**BED BATH & BEYOND INC.,** a New York corporation

By: [Signature]

Name: Seth Geldzahler

Title: Vice President - REAL ESTATE

**LEASE MODIFICATION**

THIS LEASE MODIFICATION ("**Modification**"), dated as of the 31<sup>st</sup> day of July, 2020 ("**Modification Date**") by and between ROCKWALL CROSSING, LTD. ("**Landlord**"), having an office at 2100 W. 7<sup>th</sup> Street, Fort Worth, Texas 76107-2306 and BED BATH & BEYOND INC., a New York corporation ("**Tenant**"), having an office at 650 Liberty Avenue, Union, New Jersey 07083.

**WITNESSETH:**

WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement dated as of September 3, 2004 (as amended and/or modified thereafter, the "**Lease**"), with respect to premises ("**Premises**") located at the Rockwall Marketplace in Rockwall, Texas ("**Shopping Center**"); and

WHEREAS, Landlord and Tenant desire to modify the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Modification and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitals hereinabove set forth are incorporated into this Modification by this reference. Capitalized terms used, but not defined herein, shall have the meanings ascribed them in the Lease.

2. Notwithstanding anything contained in the Lease to the contrary, Landlord and Tenant hereby agree that the modifications to the Term, Renewal Periods and/or Rent that are outlined in Schedule A hereto shall govern and control from and after the Modification Date.

3. INTENTIONALLY DELETED.

4. It is the policy of Tenant and its subsidiaries and affiliates (collectively, "**the Company**") to conduct all its business transactions in accordance with the highest ethical standards and all applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act). No individual who is employed by or who represents the Company, and no individual or entity that contracts with the Company or otherwise performs services on behalf of the Company, is permitted to solicit, accept, offer, promise or pay any bribe, kickback or any other improper payment of money, products or services. This includes, but is not limited to, any improper payment in exchange for (i) the Company's execution of this Modification, (ii) any action taken by such individual on behalf of the Company, or (iii) any action taken by a third party. If any such improper actions are observed, contact our Legal Department (Attention: General Counsel) at Tenant's notification address and/or by telephone at 908-688-0888, so that the incident may be fully investigated.

5. Landlord and Tenant each warrant and represent to the other that they did not deal with any real estate broker in connection with the negotiation, execution and delivery of this

Modification, except for Retail Consulting Services ("***Tenant's Broker***"). Tenant shall pay any commission due to Tenant's Broker in connection with this Modification pursuant to a separate written agreement between Tenant and Tenant's Broker. Each party agrees to indemnify, defend, and save the other harmless from and against any and all liabilities, costs, causes of action, damages and expenses, including, without limitation, attorneys' fees, with respect to or arising out of any claims made by any real estate broker, agent or finder (other than Tenant's Broker) with respect to this Modification in breach of the foregoing representation or claiming to have worked with the indemnifying party in connection with the Lease. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

6. Landlord represents and warrants to Tenant that, as of the date hereof, no third-party consents or approvals (including, without limitation, with respect to easement agreements and/or any lender or beneficiary of a deed of trust) are required in order for the terms and provisions of this Modification to be in full force and effect or, if any such consent is required, Landlord has obtained same prior to its execution hereof. The parties represent and warrant to each other that the person signing on behalf of either Landlord or Tenant, as the case may be, has the authority to do so and for this Modification to be deemed in full force and effect.

7. Upon the request of either party following the execution and delivery of this Modification, Landlord and Tenant shall execute an amended/restated short form lease or memorandum for recording, which shall be in form and substance as reasonably acceptable to both parties. In no event shall the amount of Rent or any other monetary terms hereof be included in any such short form lease or memorandum. Further, after the expiration or earlier termination of the Lease, Tenant agrees, upon Landlord's request, to execute and deliver a termination of such short form lease or memorandum in recordable form and this obligation shall survive expiration or termination of the Lease. Tenant shall record any such short form lease or memorandum at Tenant's expense.

8. The terms and conditions of this Modification shall be binding upon, and inure to the benefit of Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. Except as specifically amended hereby, the Lease is unmodified, is hereby ratified by the parties hereto and remains in full force and effect. In the event of any conflict or inconsistency between the terms and provisions of the Lease and this Modification, the terms and provisions of this Modification shall govern and control.

9. This Modification may be executed in one or more counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one Modification to Lease. The execution and transmission of an image of any signed document or .pdf document or signed by DocuSign (or a similar application) will have the same binding effect as an original bearing an original signature. No party may raise the use of an image transmission device or method or the fact that any signature was transmitted as an image as a defense to the enforcement of such document.

10. All late fees/interest charges/attorney fees as a result of COVID-related Lease issues occurring prior to the date of this Modification are waived and Landlord hereby acknowledges that there is no monetary default by Tenant under the Lease as of the date of this

Modification. Tenant hereby represents that as of July 29, 2020: (i) to Tenant's actual knowledge without inquiry, the Lease is free from default by Landlord, and (ii) to Tenant's knowledge, Tenant has no current right of offset against Rent.


[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Modification to Lease as of the day and year first above written.

**LANDLORD:**

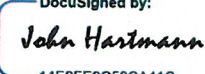
ROCKWALL CROSSING, LTD.,  
a Texas limited partnership

By: Woodmont Rockwall GP, L.L.C., its general partner

By:   
Name: Stephen Coslik, Managing Member

**TENANT:**

BED BATH & BEYOND INC.,  
a New York corporation

DocuSigned by:  
  
By: 14E2FE9C50CA41C...  
Name: John Hartmann  
Title: EVP, Chief Operating Officer

DS BN DS PR



**SCHEDULE A**

The Lease is hereby amended to reflect that:

- (a) The Term is hereby extended for the period commencing on February 1, 2021 and ending on January 31, 2026 (the "*Extension Term*");
- (b) Tenant shall pay Fixed Rent during the Extension Term at the rate of \$218,500 per year; and
- (c) Tenant shall continue to have the right to extend the Term (beyond the Extension Term) for the three (3) remaining Renewal Options of five (5) years each, subject to the terms and conditions contained in the Lease, including, without limitation, Section 2.2.2 of the Lease. Fixed Rent payable during each remaining Renewal Period shall be as specified for such Renewal Period in Section 1.1.11 (c), (d) and (e) of the Lease.